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THE

PATRIOTICK PROCEEDINGS

OF THE

LEGISLATURE OF MASSACHUSETTS,

During their Session from Jan. 26, to March 4, 1809.

CONSISTING OF

The Lieutenant Governour's Speech,
Answer of both Houses,
Report of the Joint Committee on Petitions,
Gore's Report on Crowninshield's Resolutions,
Report on the Lieutenant Governour's Military Orders, with three Speeches,
Memorial to Congress,
Address to the People.

BOSTON:

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PREFACE.

THE legislature of Massachusetts having closed its session, the true friends of our country must forever recollect its publick measures with equal pride and gratitude.

Before our last election, the fortunes of our country seemed desperate. The legislature had then sanctioned the destructive system of Mr. Jefferson, whose origin can be found but in treachery or folly, wrong feelings, or absurd theories, and whose result, if the experiment was fairly tried, would have been our ruin. The success of the federal ticket, in our counties and towns, gave new hopes to the patriots who had struggled so hard for it. Their hopes have been realized.

On the convention of the legislature in May, the first object of the federalists was the revival and restoration of the government to energy and confidence. In the appointment to offices, and in the removal of incumbents, the publick interest was studied and has been secured. Their political opponents must confess, that in the selection of candidates, there was no sacrifice of duty to their love of party or of partizans.

In their various answers to the communications of the executive, they have ever expressed just respect to the

chief magistrate of the state, as well as exacted due regard to the rights of the people. And if the alarming doctrines and arbitrary measures of the lieutenant governour, have exposed him to merited censure, its suppression would have been an abandonment of the constitution, of the liberty of the citizen and the sovereignty of the state.

The various reports and resolutions of the legislature on the system of policy adopted by Mr. Jefferson and Mr. Madison, towards France and England, were demanded by the ruinous experiments and delusive pretensions of our cabinet. The coolness, firmness, candour and dignity of these legislative declarations of our rights, discover great minds intent on great ends. In their memorial to Congress and address to the people, they exhibit none of that petty spirit of complaint, whose wrongs are satisfied by petulance and invective, but that sober sense of justice, which first measures its claims, and then insists on their unequivocal admission.

It will be readily perceived by all discerning men, that the counsels of our legislature have already checked the mad career of a cabinet, which had no guide but its fears and prejudices, and a second time roused our country to a resistance against oppression, which we trust in God will secure our liberty.

LIEUT. GOVERNOUR'S SPEECH.

Gentlemen of the Senate, and
Gentlemen of the House of Representatives,

THE peculiar circumstances under which we have assembled, call for a serious direction of our thoughts to that Being, in whose hands are the destinies of men and nations. The aspect of our publick affairs imposes on all the duty of patience and circumspection in their investigations and their actions. Our best exertions for the general welfare are now necessary. The known patriotism of the people of Massachusetts is a pledge for the display of these virtues on every publick emergency. How far existing or threatened evils may be provided against, or endangered rights be secured, by any agency constitutionally confided to their State Legislature, are, at the present moment, considerations of the most interesting nature.

That afflicting Providence, which has deprived you and your fellow citizens of the assistance and experience of him who was selected by their suffrages to discharge the important duties of Chief Magistrate, can be felt and lamented by none more sincerely than by myself. This event having constitutionally devolved on me these duties; as a substitution to his

talents and his experience, you may rest assured, for the residue of the year, of my solicitude, assiduity and best endeavours to promote what, from my own convictions, shall appear most conducive to the good of the whole. On this occasion, to repeat the prescribed oaths, which I have already taken, would be but the avowals of my political sentiments. The national and the state constitution contain them. The fair and obvious construction of these instruments, in the sense in which I shall be convinced they were intended to be understood, will furnish my rule of action, wherever they can apply. The outlines of our respective relations and duties are there to be found. My inexperience in legislative business will, I fear, be thought too often to call for your indulgence and candour. If, instructed by the constitution and the law, and sincerely aiming to adhere to their provisions, and to advance the general interest and harmony among the citizens, there should unhappily be a difference of opinion between the different departments of government, as to the means of their application, it can be no just cause of uneasiness or distrust among us.

The New England states have been represented, to their injury and to the injury of the United States, as distracted with divisions, prepared for opposition to the authority of the law, and ripening for a secession from the Union. Anxieties at suggestions or apprehensions of this kind have been expressed on the floor of Congress. Such suggestions we trust are unfounded. Our enemies alone could have made them. It is to be lamented that any colour has ever been furnished for such alarms. It cannot be concealed that in this state, existing difficulties, and the apparent indications of greater ones, have produced instances of excitement, violence and indiscretion, which form serious claims on our attention. Could legislators be agreed, all would be tranquillized from without. Would not such an achievement be worthy an united effort, and reward the labours of a

whole session? The times call for union, confidence and mutual forbearance and accommodation. Will not a recollection of some prominent principles and facts in our history, with a legislative example, have this tendency, among our citizens? May we not avail ourselves of this opportunity to review, in a summary manner, the situation in which we are placed, and the dangers to which we are exposed?

If ever a forgetfulness of past dissentions, and joint efforts for the common interest, were necessary, they are so at this moment. Will not each citizen determine for himself, that no personal gratification shall stand in the way of any arrangement, which will concentrate the general will, and direct its strength for our country's safety? For one I am prepared for this measure of accord and devotion to the exigency of the crisis, or my heart deceives me. Union is every thing; it is our strength, our numbers, our resources. If we must have conflicts, let them be with foreign enemies. If war, let it be by the whole people, as one man, in defence of their violated rights. Let not a particle of our means be wasted in party or individual contentions.

It cannot be necessary, nor would it be beneficial, to review in detail the continued aggravated injuries and insults which have been heaped upon us by the warring powers of Europe. The aggregate of our wrongs have been great indeed. The countervailing measures of our national government, produced by these aggressions, are generally known. The recent communications of publick documents, and the able and repeated disquisitions on these topicks, as published to the world, explain principles and facts beyond the utility of further elucidation.

Although our commercial intercourse and national defence is, from necessity and the soundest policy, confined to the United States, yet it is not unbecoming any member of the Union, to add its concurring energies to national measures, or, with fairness and moderation, to question their justness or policy, while

they are pending and ripening for adoption. But with governments as with individuals, there are stages when questions can no longer be usefully open to controversy and opposition; stages when an end must be put to debate, and a decision thence resulting be respected by its prompt and faithful execution, or government loses its existence, and the people are ruined. Are we not in this stage of the great questions of foreign aggressions, embargo, non-intercourse, national defence, and other means of safety, deemed necessary by those intrusted with the final disposal of these objects? A balanced government and its authorities, capable only of executing the deliberate volitions of a real majority of the citizens, constituted and directed by known and fixed principles, established by and proceeding from themselves, is so safe, so reasonable, and so beyond every thing else essential to their own liberty and happiness, that its hazard or interruption cannot be contemplated but with distress. To such a government, foreign nations, with the unprincipled and desperate, may be hostile; but our virtuous citizens, sensible of its blessings, will yield to any sacrifice for its support. At no times has its administration, however wise and happy, been satisfactory to all our citizens. This was not to be expected. Its impartiality, justice, forbearance and pacifick policy have been no security against violence, injustice and depredation on our rights of person, property and sovereignty by the belligerents. Acts of insult, rapine and plunder have been multiplied upon us and pressed us to the very wall. Does further retreat and much further forbearance consist with the spirit and genius of Americans? Yet we trust the continuance of peace, with its inestimable blessings, is not altogether hopeless. The aggressing nations may yet be made to listen to the dictates of their own interest, and spare us the dreaded calamities of war. If not, there is a point in national sensibility, as in the feelings of man, where patience and submission end. Beyond this is

degradation, destruction and death. This point is, when suffering forbearance involves a surrender of honour, property, and the power of self-government. How near we have approached to this period, or how fast we are approximating, is not for us to determine. Such considerations ought with confidence, as they may with safety, remain where the constitution has placed them. Congress, with an united people, may still avert the threatened evil. Pacifick wisdom may yet be better than weapons of war. And should it become necessary to cast the die, we may be assured our representatives, participating in all the trials, burthens and sufferings imposed on others, will not incautiously precipitate the throw.

Whence then the causes of jealousy, distrust, altercation and bitter aspersion of some of our citizens? Whence then the ever to be regretted indiscretions, suddenness and individual rashness, that have denounced our national government and wounded our own? Under a general pressure, however necessary, excitements are easily produced. The effects of national measures have fallen, and will fall more severely, on some descriptions of citizens and portions of the community than others. This is unavoidable. Ship owners and the New England states may have been the greatest sufferers. But a necessary inequality, in the effect of measures, furnishes no objection to their justice or their policy. All agree something was necessary to be done. Had other measures been adopted, they probably would but have produced another description of evils, not have diminished the aggregate. It was not to have been expected that the United States could be exempted from disasters, when causes were in operation, which have involved half the world in the greatest. We in some measure know the effects of past arrangements, but can never know what would have been the results of different ones. If our privations have preserved a portion of our property, our peace, and the opportunity of yet selecting between alliances, peace

and war, are we certain the price has been too great? It has been the unenviable and arduous task of our rulers to collect the diversified sentiments of their constituents, on facts, and to assimilate and concentrate them, as far as possible, to an according system, predicated on the prevailing opinion. By what other principle, by what better rule, can society act? If the degree, the kind and the time for action must wait for unanimity, our rights would never be defended and our country would be ruined. By the voice of the majority alone can society exist for a moment. To oppose it, is to oppose a vital movement of the body politick. To triumph over it, is to conquer ourselves and render us a prey to any and every invader. A government of the minority is a government of anarchy and confusion, a dissolution of all principle and of all authority. Who can contemplate such a state of things but with horrour? Who can lend it even his silent countenance? Are not liberty, safety and property, our dearest rights and dearest enjoyments, the creatures of law, upheld by its power and rendered sacred by its energies? If government languishes and fails, will not these blessings languish and perish also? Who does not know, in the range of excited passions, broken loose from legal restraints, property is often fatal to its owner, virtue to its possessor, and family blessings an invitation to the hand of the destroyer? When beholding in the mirrour of past times and distant ages the black and frightful atrocities of furious and ungoverned men, amidst the wrecks of civil establishments, will not thoughtfulness, in the language of our departed patriot, "*frown indignantly* upon the first dawning of every attempt to alienate one portion of our country from the rest, or to enfeeble the sacred ties which now link together its various parts?" Frown upon every suggestion of a non-execution of the law, resistance or abandonment of the Union? Such suggestions are not less a libel upon the morals and understanding of the great body of the New England

people, than on their patriotism. Their character is not marked with propensities to outrage, disorder and blood. Such a reproach must be repelled. Our citizens may differ on the necessity and wisdom of existing or projected measures; but for support of their government, their rights and their independence, the majority is immense.

Will not the advocates for town meetings, the authors of resolutions, be induced calmly to weigh the spirit and principles of their opposition, and to reflect further on the tendency of their measures? Are they prepared to pull down the splendid edifice erected by the wisdom and valour of their fathers, and to bury themselves under the ruins of liberty? Are not all their privations and sufferings notorious to their rulers, and from necessity yielded to, with parental sympathy and painful sensibility? While a large majority of the people of the Union, of their national representatives, of the state legislatures, of their towns and counties, seriously believe that the existing measures are essential to our safety and the best for the whole, can their opposers wish them to be abandoned, and a surrender of the government into their hands? And will they yield it, in turn, to other towns and sections of the country, that may make a similar claim? Would they wish in these perilous times to see our peace, liberty and social blessings at the feet of a party? Would they wish to break those ties which unite all to the common centre, a deposit for the publick opinion, publick confidence and publick power? Such a secession from the salutary conceptions of our constitutions and the fundamental principles of our government would be more to be deprecated and outweigh in mischief the most exaggerated evils of the embargo.

The cultivated reports that the administration and the southern people are hostile to commerce, and unfriendly to the eastern states, are calculated to produce uneasiness, jealousies and dissentions. The evidence of such facts I have never seen. My con-

victions, under some advantages for observation, have been otherwise. I question not the sincerity of the opinion of others. The principles and the publick conduct of our rulers are the fair objects of a manly and publick spirited scrutiny, for the purposes of merited censure or approbation, their continuance or removal from office in the prescribed forms. The proof of their talents, zeal and labours to serve and render their country great and happy, are before the publick. Their discussion with truth and fairness would be salutary and agreeable to the genius and spirit of our government. But misrepresentations, groundless suspicions, violent and indiscriminate abuse, unless checked, must end in opposition to the law, a contempt for its authority, and distracted breaches of the publick peace.

If legal animadversions on incendiary and libellous publications would be thought by some, dangerous to the liberty of speech and the press; a strong publick opinion, favourable to government, would be equally efficacious to its authority and to discountenance its opposers.—Shall such aid be withheld? Or must false views, misstatements and groundless alarms, indicative of extreme distrust and danger from the representatives of our own election, the government of our own choice, hurry virtuous and well meaning men into acts pregnant with awful consequences? It is said measures are unnecessary, unconstitutional, oppressive and tyrannical. Is it certain this is correct? Are citizens in the streets, in town meetings, in multitudinous assemblies, citizens pressed with deep personal interests and excited from erroneous conceptions, capable of deciding on great, complicated constitutional questions? Hence our peril. Hence distraction and confusion in society. Hence encouragement to the enemy. Are such citizens more worthy of confidence than their rulers? Are they better instructed, or do they possess higher means of information? Are our rulers blinded by their interests or impassioned by

their sufferings? They decide against their interests, and their sufferings are in common with their constituents.—Are they actuated by prejudice or stimulated by resentments? They have nothing personal. Their insults and injuries have been the insults and injuries of their country. What then is to be done? States, towns and individuals have their favourite projects. The Union have theirs. Thus jarring, are we, with augmented resentments, to rush together in ruinous collisions? Are we with mutual hatreds to rend asunder the bands which have united us? to throw from our vitals the shield which protects them?

A good government is Heaven's richest gift. Past events will shew the worth of ours. Calamities formed and introduced our federal constitution. Its adoption, the desired and long suspended hope of our citizens, was hailed, and truly hailed, as the salvation of our country. Experience has exalted its value, and disclosed more and more its practical excellencies. It is worthy the wisdom and labours of its authors, and merits every sacrifice for its preservation. Our history which preceded its adoption furnishes examples which are fraught with admonitions. Our government was humbled and inefficient. Our union a thread. Our commerce unregulated and unprotected. Our revenue nothing. Our faith perfidy. Our credit bankruptcy; and our privations the want of every thing. Individuals were embarrassed; grievances complained of; our rulers censured; town and county resolutions published; combinations formed; a non-compliance with the laws announced; government opposed; property sold for one third its value; tender laws made; the insolvent imprisoned, and our courts of justice stopped. But government must then be supported and its laws be respected. Troops were detached, armed men patroled our streets, and we saw them with a joy inspired by the idea of protection and security, from the execution of the law and the

energies of its officers. Is the preventative against all these and worse calamities now to be abandoned, and these and worse ones to be invoked to afflict us?

Should the northern, the middle or the southern states, should Virginia, or could Massachusetts, any of her towns or citizens, dictate measures to Congress, and by opposition or a convulsed state of things force their adoption: then, indeed, would one state have obtained a disastrous triumph over the United States! Then we should have conquered the Union, then should we have prostrated its government, and have trampled under our feet the last reserve of national power. Could the opposition prevail, a part coerce the whole, our rights and our strength would be scattered to the winds. As a nation we should perish, as freemen be lost. Our palladium, our ark, our national bulwarks, would be shattered and broken to atoms. Then might their fragments *float* by the *licenses* of our enemies. Then might we single handed meet the crisis, and buffeting the destruction threatened from the deep, conflict with the clouds above, which, in angry collision, are ready to break on our heads. But this can never be. Society is yet strong Americans, virtuous and enlightened, Americans, steady and determined, will continue their confidence in their efforts. They will rally round the national constitution, cling to their government, and should it be driven to the edge of a precipice, keep their hold in the extremity of its exit, and sink with it into the awful abyss.

The importance and the interesting and perilous nature of the crisis, has compelled me, thus long, to dwell upon it, and to hope from the wisdom of our legislature, some reconciling expedient to quiet the agitated minds of our citizens.

Is it the idea that there are no dangers; that it can be said, Thus far shall the incitement come and no farther, and here shall its effects be stayed? Let us not be deceived. This is the prerogative of God

alone. Are we ripe, are we prepared to proclaim to a suffering and an enslaved world, that unhappy man has made his last disposing effort for the support of a free government—that the most promising experiment has so soon failed—that liberty, the legitimate offspring of law, the favourite child of government, has been expelled its hoped for resting place, driven from its last retreat, and banished the world? Can we not wait with magnanimous patience, and endure privations a few months longer, and give to government *one* fair, unimpeded experiment of their measures on foreign nations? Will not the evils and the objections from existing measures lie as strong against non-intercourse, war, or any other arrangement for national defence? Are we ready to surrender all, to export our government with our produce, and to import foreign despotism with foreign goods? The farmer's merchandize and his ships are in the country. Mine are there, and I should rather sink them than government should be sunk. Without government they are not mine; nor family nor personal protection, nor the opportunity of future acquisitions or future happiness.

At all times it is pleasing to contemplate the patriotism, order and discipline of our militia, to which the constitution looks with confidence for the defence of our country. The last autumnal reviews have been spoken of with pride by gentlemen of military skill. An establishment so safe, so economical, so preferable to a standing army, in time of peace, can never want the patronage of a provident legislature. So long as this system shall be deemed susceptible of improvement, it will be the favourite object for the labours of the representatives of a free people. I am not sufficiently conversant with the principles or details of military arrangements to decide on their defects or to point out their remedies. To legislators of military science and experience this subject peculiarly addresses itself. They will know whether there is the greatest aptitude and

efficiency in all its parts, and whether it is capable of moving and being moved, in harmony, without mortifying delays or dangerous collisions.

An evil of magnitude is spreading its calamitous effects over every portion of our Commonwealth. The accumulation of depreciated and counterfeited bank bills, with all their fraudulent and demoralizing action on society and the habits of individuals, are not, perhaps, less to be deprecated than a temporary suspension of a foreign market, for the produce of our farms. The impositions practised, the inability to lose what had been honestly taken, the temptation to pass, with the frequency of doing it, and the impunity with which it may be done, are fast breaking down the moral sense, and eradicating from the minds of citizens that sublime reverence for justice, those lively repulsive principles to fraud, which are the ends, the fruits and perfection of moral cultivation. The spurious and the genuine are indiscriminately passed, under the false apology that they were honestly received, and that the bad are not certainly known to be such. Indeed, a knowledge of the characteristicks of the various bills, of all the banks, in this and the neighbouring States, circulating among us, is a science too nice, extensive and complicated for the great body of our citizens to learn. Will it not be an object worthy the attention of the legislature, to protect their constituents against so serious a depredation on their property and morals? Would not the confining banks to a compliance with the express or implied principles of their respective institutions, and obliging them all to issue bills of the same figure and device, with the exclusion from circulation of all foreign bills, which should not be issued in conformity to such a system, cure very many of the evils? To the experience and providence of the legislature our citizens look for a remedy.

No crisis should arrest the progress of the arts and sciences, or stay the fostering hand of improvement.

Our most considerable societies, for these purposes, were, to the honour of their founders and our country, established during our struggles for national existence. Are not the meritorious examples of encouragement given to manufactures, in the other states, worthy the imitation of this, especially of an adjoining one, which, under the liberal auspices of a publick spirited citizen, is becoming famous for the manufacturing of woolen cloth, from a superiour and an improved breed of imported sheep? Would it not be useful to countenance mechanical improvements and fabrications, by exemptions from taxes and by extending the principles of our laws, respecting the overflowing of lands by grist and saw mills, to cotton factories and other labour saving machines, depending on water courses for their movements? Would not the proceeds of the sale of a few eastern townships, vested in a society, as a perpetual fund, for the promotion of manufactures, charged with the appropriation of its interest, in premiums and other encouragement to ingenious manufacturers, be seed sowed in good ground, which would produce, to the present and succeeding generations, an harvest of an hundred fold?

Facilities to husbandry, commerce and manufactures are good roads. Most of our great ones are now in such convenient and unalterable directions, as will probably command an increasing travel for centuries yet to come. Would not a law protecting and encouraging to individuals to border them with trees give ornament to the country, comfort and refreshment to the traveller, fuel to the planters, and gratification to all?

To cherish the interest of literature, the sciences and their seminaries, especially the University at Cambridge, publick schools, private societies and publick institutions, rewards and immunities for the promotion of agriculture, arts, sciences and manufactures, cannot be less a compliance with the inclinations of a Legislature of Massachusetts than with

that duty which is, at all periods, made binding on it by the constitution under which it acts.

The particular state of our militia, ordnance, military stores and supplies will appear from the detailed report and returns of the adjutant and quarter master generals, which shall be communicated by special message so soon as they shall be prepared.

Gentlemen of the Senate, and
Gentlemen of the House of Representatives,

For your patience and indulgence accept of my sincere acknowldgements ; and may that wisdom which is from above, which is profitable to direct, gentle and easy to be entreated, lead in our councils and govern our conduct through the session.

LEVI LINCOLN.

ANSWER OF THE SENATE.

May it please your Honour,

WHILE the Senate lament the solemn dispensation of Divine Providence which has deprived the commonwealth of its chief magistrate, they earnestly beseech the Father of Lights to endue you with wisdom to discern, and fidelity to pursue, the path of duty, in the discharge of the high and responsible trust, which in consequence of this event the constitution has devolved upon you. Assisted in council by men distinguished for their talents, experience and integrity, we trust, that while they will share with you the responsibility, their advice will have a proper influence in the direction of the measures of the executive department.

Deeply impressed by the perilous and distressing aspect of our publick affairs, we assure Your Honour of " our best exertions for the general welfare."

We are happy to accord with you " that our enemies alone could have represented the New England states as prepared for opposition to the authority of the law, and ripening for a secession from the Union." We believe with Your Honour, that " such suggestions" in regard to New-England " are unfounded." " It cannot" indeed " be concealed that in this state existing difficulties, and apparent indications of greater ones," have, as in a former memorable period of our history, roused the spirit of our citizens; but we trust with Your Honour " that their character is not marked with propensities to outrage, disorder and blood." On the contrary, that as they correctly understand their duties, they will steadily and resolutely maintain their rights.

The people of New England perfectly understand the distinction between the constitution and the administration. They are as sincerely attached to the former as any section of the United States. They may be put under the ban of the empire, but they have no intention of abandoning the Union. And we have the pleasure explicitly to declare our full concurrence with Your Honour, " that such suggestions are not less a libel upon the great body of the New England people, than on their patriotism."

As the government of the Union is a confederation of equal and independent states with limited powers, we agree with Your Honour " that it is not unbecoming any member of the Union with firmness and moderation to question the justness or policy of measures while they are pending and ripening for adoption;" and we learn with concern from Your Honour, " that there are stages when questions"—without even excepting questions involving unalienable rights—" can be no longer open to controversy and opposition"—" stages when an end must be put to debate, and a decision thence resulting be respect-

ed by its prompt and faithful execution, or government loses its existence, and the people are ruined."

Even if Your Honour's principle were correct, can it be imagined that "we are" (as Your Honour is pleased to intimate) "now in this stage, on the great questions of non-intercourse and national defence?" These measures are "still pending and ripening for adoption." Is it then "unbecoming" for this state to question their "justness or policy?"

But with great deference to Your Honour, we apprehend, that this principle, if carried into effect, would render our free government a despotism, and bring inevitable "ruin upon the people." If we apply it to one of the cases mentioned by Your Honour, the embargo, the principle will present itself in some of its deformity. It is well known that the act, imposing the embargo, passed the Senate of the United States in the space of a few hours, and passed all the forms of legislation in four days, after that measure was recommended by the President.

The people of this state, therefore, could not by any possibility have had an opportunity "to question its justness or policy," and even senators, in Congress, were not allowed the time they requested for that purpose.—And are the people of Massachusetts to understand, that "a decision" of this nature "must be respected by its prompt and faithful execution?" that it is too late for them to question its "justness or policy?" Are they to believe that the "stage" has passed, and that indeed nothing remains for them but quiet submission? We owe it to ourselves and to the people distinctly to deny this doctrine, at once novel and pernicious.

An administration may become corrupt, but the people will remain pure. We are therefore constrained with great respect to express our mingled regret and astonishment, that Your Honour should seem to doubt the capacity of the people to decide on questions involving their unalienable rights.—Your Honour is pleased to ask "if citizens in the

streets—in town meetings, in multitudinous assemblies, pressed with deep personal interests, are capable of deciding on great, complicated and constitutional questions?" and to observe that from hence our peril.

May we be permitted to ask, who shall decide when the publick functionaries abuse their trust?—We need not inform Your Honour, that the meetings to which you allude, have been attended by men second to none in the United States for their legal and political knowledge—for their love of order—and for their patriotism: many of whom have grown grey in the publick service and confidence—many of them now holding high and important offices in the state; and that these meetings have been conducted with great order and decorum.

Can such assemblies of the citizens merit censure in a republican government? but you will please to permit us to remark, that your animadversion upon these meetings, appears the more extraordinary, because in another part of your communication, Your Honour is pleased to observe, "that it had been the arduous task of our rulers to collect the diversified sentiments of their constituents, and to assimilate and concentrate them as far as possible to an according system predicated on the prevailing opinion"—a measure indeed very proper, but which could only be effectual, by the free interchange of opinion, and those very meetings of the citizens from which Your Honour seems afterwards to apprehend so much danger. Your Honour may be assured that we "question not the sincerity of the opinion" which you have been pleased to intimate, of the incapacity of the people—But you will permit us to declare, that upon their knowledge of their rights and duties, and their firmness and perseverance in maintaining them, our hope is placed. They will ultimately form a just decision. Hence our ark—not "our peril."

We beg leave to observe, that those rights, which the people have not chosen to part with, should be

exercised by them with delicacy—only in times of great danger—not with "distraction and confusion"—not to oppose the laws, but to prevent acts being respected as laws, which are unwarranted by the commission given to their rulers. On such occasions, passive submission would on the part of the people, be a breach of their allegiance, and on our part treachery and perjury. For the people are bound by their allegiance, and we are additionally bound by our oaths to support the constitution of the state—and we are responsible to the people, and to our God, for the faithful execution of the trust.

But Your Honour is pleased to observe, that "the Union have their favourite projects—states, towns and individuals have theirs;" and to inquire whether, "thus jarring with augmented resentments, we are to rush together in ruinous collisions."

Can it be necessary to remind Your Honour that the aggressor is responsible for all the consequences, which you have been pleased so pathetically to describe?—that the people have not sent us here to surrender their rights, but to maintain and defend them?—and, that we have no authority to dispense with the duties thus solemnly imposed? Your Honour has described "the calamities which introduced our federal constitution," with great truth. "Our government was humbled and inefficient—our union a thread—our commerce unregulated and unprotected—our revenue nothing—our faith perfidy—our credit bankruptcy—our privations the want of every thing—individuals were embarrassed," &c. "and our courts of justice stopped, &c."

Can it be necessary to remind Your Honour, that the administration of Washington produced precisely the reverse of the picture which you have been pleased to draw so much to the life?

And will you permit us to ask in our turn, but in Your Honour's words, "Whence then the causes of jealousy, distrust, altercations and bitter aspersion" of that great and good man, and upon all who

were attached to his measures? "Whence the ever to be regretted indiscretions, suddenness and individual rashness which denounced" an administration, that safely guided the people to prosperity and glory, amidst great and impending dangers? Were these calumniators "more worthy of confidence," "better instructed," or did they "possess higher means of information"—were they less "blinded by their interest," less "actuated by prejudice, or stimulated by resentments," than the political saviour of his country and his compatriots? Whence then "the misrepresentations, groundless suspicions, violent and indiscriminate abuse," thrown upon men who had a right to call for "union" in support of their measures—upon men who had given to the publick "the proof of their talents, zeal and labours to serve and render their country great and happy?"

But the present administration, although aware of the "effects of past arrangements," had not the wisdom or magnanimity to adopt them. They have ventured upon new expedients—and are responsible to their country for the distressing "results."

Your Honour is pleased to inquire "if we could not wait with magnanimous patience, and endure privations a few months longer, and give to government one fair, unimpeded experiment, upon foreign nations."

The administration has indeed been "pressed to the very wall," and we know not how much "further" they would "retreat" if they could.

But, may it please Your Honour, we have seen as little of "spirit" as of policy in the embargo system. We know that the emperour approves, if he did not dictate, the measure. We know that Great Britain receives immense advantage from the surrender to her of the whole trade of the world; and we cannot imagine why the people should be called upon to "endure privations" any longer, unless the administration, having failed to operate on the fears or interests of the "warring powers," expect ere long to obtain some relief from their compassion.

We most heartily concur with Your Honour, "that there is a point in national sensibility, as in the feelings of men, where patience and submission end." And when that crisis shall arrive, Your Honour may rest assured that the people of New England "will (as you have been pleased to say) rally round the national constitution." But, sir, they will not "cling" to an administration which has brought them to the brink of destruction; they will not "keep their hold in the extremity of its exit," nor "sink with it into the frightful abyss." No, sir! the people of Massachusetts will not willingly become the victims of fruitless experiment.

We shall be ready at all times, with you, "to cherish the interests of literature, especially the University at Cambridge;" and the sentiments which Your Honour is pleased to advance, that "no crisis should arrest the progress of the arts and sciences," meets our concurrence.

We shall endeavour to find a remedy for the "accumulation of depreciated and counterfeit bank bills," to which Your Honour has been pleased to call our attention.

Touching the militia—we cannot conceal our regret that the administration of the general government has not discovered that dependence upon "an establishment," which Your Honour is pleased justly to observe is "so preferable to a standing army in time of peace," "and to which the constitution looks with confidence for the defence of our country." We regard that institution at once with pride and with confidence—and we agree with Your Honour that it "can never want the patronage of a provident legislature;" surely not in times of peril like these. Your Honour was pleased to anticipate a difference of opinion, but we beg you to "rest assured of our solicitude, assiduity and best endeavours to promote what from" our "own convictions shall appear most conducive to the good of the whole." And we join with Your Honour in the wish that the "wisdom

which is from above, which is gentle and easy to be entreated," may "lead in our councils;" but we fervently pray moreover, that not only our conduct, but that of the general government, may be directed by that wisdom, which is also "pure—peaceable—full of good fruits—without partiality and without hypocrisy."

ANSWER OF THE HOUSE.

May it please Your Honour,

THE House of Representatives view with deep and serious regret the very peculiar circumstances under which they have assembled, and with fearful anxiety direct their thoughts to that Being, without whose aid the portentous aspect of our publick affairs cannot be changed. In a season of political calamity, when the hand of the general government presses with peculiar rigour upon the people of Massachusetts, the known patriotism of her sons becomes a sure pledge for the display of those virtues which the times require. At such a moment the House of Representatives will investigate with patience and circumspection the causes which have led to the existing and threatened evils, and will endeavour to apply such remedies as the powers confided to that branch of the state legislature will constitutionally warrant.

The afflicting dispensation of Divine Providence, which has deprived this Commonwealth of its late commander in chief, cannot be more sincerely deplored by Your Honour, than it is sensibly felt by the House of Representatives. Elevated to the chair of state, in opposition to the political sentiments of a

majority of the legislature, we are happy to declare, the late Governour Sullivan, in the discharge of his high and important trust, appeared rather desirous to be the governour of Massachusetts, than the leader of a party, or the vindictive champion of its cause.

We receive with respectful attention the assurance of Your Honour's "solicitude, assiduity and best endeavours to promote what shall appear most conducive to the good of the whole;" and pursuing the fair and obvious construction of the national and state constitutions as a rule of action, we apprehend that it is impossible Your Honour should furnish any occasion for the exertion of candour or indulgence on our part.

We are unwilling to believe that any division of sentiment can exist among the New England states or their inhabitants as to the obvious infringement of rights secured to them by the constitution of the United States; and still more so, that any men can be weak or wicked enough to construe a disposition to support that constitution, and preserve the Union by a temperate and firm opposition to acts which are repugnant to the first principles and purposes of both, into a wish to secede from the other states. If a secession has been conceived by the states or people referred to in Your Honour's communication, it is unknown to the House of Representatives, who absolutely disclaim any participation therein, or having afforded the least colour for such a charge. If ever such suspicions existed, they can have risen only in the minds of those who must be sensible that they had adopted, and were persisting in, measures which had driven the people to desperation, by infringing rights which the citizens of Massachusetts conceive to be unalienable, and which they fondly hoped had been inviolably secured to them by the federal compact.

The legislature and people of Massachusetts ever have been, and now are, firmly and sincerely attached to the union of the states, and there is no sacrifice

they have not been, and are not now, willing to submit to, in order to preserve the same, according to its original purpose. Of this truth Your Honour must be convinced. We do not appeal to the unvarying conduct of our citizens during the glorious administrations of Washington and Adams, when the patriotick endeavours of our statesmen, under the most perplexing embarrassments, pursued and secured the interests and honour of the nation;—but we can appeal to the patience with which our fellow citizens have borne the administration of those, whose boast it has been to proscribe all the measures of their predecessors, and most of the men whose talents and virtues had assisted in securing to the United States the blessings of a free government. The people in this section of the country had undoubtedly flattered themselves, that the liberal confidence which they had afforded to the professions of their rulers, would induce a regard to their interests; and when experience has shown the incompetency of their measures to the honour or safety of the country, they would have had the magnanimity to correct their errors. It ought not to be matter of surprise that men who, either on the floor of Congress or elsewhere, have adopted measures hostile to the Union, and subversive of its principles, should endeavour to brand with the calumny you mention the efforts of those who sincerely aim at preserving the constitution, by demonstrating the tendency of their acts, and who studiously exert themselves to prevent a dissolution of the federal compact, by stating the dangers of such an event: an event which this house cannot fail to deprecate as the greatest of evils, and to prevent which they will leave no constitutional means unessayed. But it would be greatly to be deplored, if any thing in Your Honour's address could be construed in to a sanction, by the chief magistrate of this commonwealth, of a charge so unfounded and a slander so unmerited.

It is with much pleasure the House of Representatives receive Your Honour's declaration, "that no personal gratification shall stand in the way of any arrangement, which shall concentrate the general will and direct its strength for our country's safety." In this declaration so honourable to yourself, sir, the House of Representatives most promptly and cordially concur, and so far as constitutionally they may, sacredly pledge themselves to Your Honour in defence of all those rights which have been violated abroad, or usurped at home.

The House of Representatives agree in sentiment with Your Honour, that "it cannot be necessary to review in detail the continued and aggravated insults and injuries which have been heaped upon us by the warring powers of Europe;" yet it may not be improper to remark, that when a government, in the first instance, from an overweening partiality to one power, an undue prejudice against another, or a timid and pusillanimous policy towards all nations, surrenders essential rights without a struggle, the nation over which it rules becomes the victim of aggression from without, and of imposition from within. The partial developement of publick documents is but too conclusive on this point.

That the regulation of our commercial intercourse and our national defence are most wisely confided to the general government, is a truth so plain and palpable, that we should hold it unnecessary to be repeated here, were it not for the purpose of concurring with Your Honour in the justice of the sentiment; but the liberty of discussing the measures of our general government, with freedom and firmness, though with fairness and moderation, is a right the House of Representatives never will relinquish.

We cannot agree with Your Honour, that in a free country there is any stage at which the *constitutionality* of an act may no longer be open to discussion and debate; at least it is only upon the high road to despotism that such stages can be found. At such

a point the government, undertaking to extend its powers beyond the limits of the constitution, degenerates into tyranny—The people, if temperate and firm, will, we confidently rely, eventually triumph over such usurpations. Were it true, that the measures of government once passed into an act, the constitutionality of that act is stamped with the seal of infallibility, and is no longer a subject for the deliberation or remonstrance of the citizen, to what monstrous lengths might not an arbitrary and tyrannical administration carry its power? It has only to pass through rapid readings and midnight sessions, without allowing time for reflection and debate, to the final enacting of a bill; and before the people are even informed of the intentions of their rulers, their chains are rivetted, and the right of complaint denied them. Were such a doctrine sound, what species of oppression might not be inflicted on the prostrate liberties of our country! If such a doctrine were true, our constitution would be nothing but a name —nay, worse, a fatal instrument to sanctify oppression, and legalize the tyranny which inflicts it.

Nothing but madness or imbecility could put at hazard the existence of a "balanced government, capable of operating and providing for the publick good," unless the administration of that government, by its arbitrary impositions, had endangered or destroyed the very objects for the protection of which it had been instituted. Should such a case ever occur, on the administration who should usurp powers and violate such sacred obligations, must rest the odium of having hazarded a government "so safe, so reasonable, and so beyond every thing else essential to the liberty and happiness of our fellow-citizens."

Although the history of the first twelve years of our federal government abundantly proves that no administration, however wise and happy, can be satisfactory to all our citizens, yet have the people, at all times, and under all administrations, an undoubted right to insist that neither the letter nor the spir-

it of the constitution shall be violated. And most certainly the policy and capacity of that administration may be questioned, which in a few years has reduced this great, active and enterprising nation from an unexampled height of commercial prosperity, to comparative poverty and idleness. Assuredly that administration, which meets aggression only with retirement and non-intercourse laws, never can acquire the confidence of a commercial people, and never will afford any security against violence, injustice and depredation. To the present administration is the country indebted for a system of measures as novel as it is imbecile, as weak against foreign nations as it is oppressive and ruinous to our own.

The House of Representatives certainly have no disposition to assume the direction of those affairs, the management of which has been so properly confided to the general government; yet upon this occasion it may not be deemed improper to observe, that, from the scanty information which has been suffered to escape, they cannot discern in the situation of our foreign relations, any difficulties or embarrassments which have not heretofore been successfully encountered by former administrations of our government. During the administration of Washington and Adams, circumstances of much greater political embarrassment were met with a steady eye, a firm and vigorous purpose. Negotiations with both the great contending powers of Europe were commenced, and by a close adherence to the just rights of our nation, with an active preparation to use force, when negotiation failed, the patriots of that day successfully repelled every unjust pretension, while they preserved the honour, as well as the resources and property, of their fellow citizens. The House of Representatives, therefore, cannot doubt that the same measures, resorted to with the same spirit and good faith, would effect now what they did then, the protection, instead of the annihilation, of our commerce—the preservation, instead of the abandonment, of the nation's honour.

It cannot be denied that jealousy and distrust have arisen among the people of Massachusetts, and much is it to be regretted that they have been so well founded. A system of policy ruinous to their interests, and uncongenial to their enterprising spirit—a system for which the administration has yet, in our opinion, assigned no adequate reason, has borne most heavily and unequally on the northern and commercial states. For relief from this oppression the people fondly looked to the meeting of Congress; but alas! how fatally have their hopes been blasted! Their humble prayers have been answered by an act so arbitrary and oppressive, that it violates the first principles of civil liberty, and the fundamental provisions of the constitution. At such a moment, and under such a pressure, when every thing which freemen hold dear is at stake, it cannot be expected, and it ought not to be wished, that they should suffer in silence. The House of Representatives cannot admit that laws which operate unequally are unavoidable—the government, in their opinion, has no right to sacrifice the interests of one section of the Union to the prejudices, partialities or convenience of another.

We perfectly agree with Your Honour in the general principle, that in a free government, the majority must determine and decide upon all existing or projected measures. But it will be recollected that the decision of that majority, to be binding, must be constitutional and just. Government is formed for the security of the citizen and the protection of his rights. Whether his liberty is infringed, his rights violated or unprotected, if not absolved from his allegiance, he may demand redress, and take all lawful measures to obtain it.

It is impossible for the House of Representatives to follow the very wide and extended range of political remark through which it has pleased Your Honour to expatiate. The limits which time and duty prescribe, necessarily confine our observations to a

few of the most prominent features of Your Honour's elaborate address.

Those individual indiscretions, and that rashness of sentiment and action, which have so justly incurred Your Honour's censure, as opposing a vital movement of the body politick, appear to indicate with precision, that period of our federal history, in which an insurrection, fomented by those who assumed to themselves exclusively the denomination of republicans, and aided by the machinations of French intrigue, had nearly prostrated the national government. Thanks to the friends of the constitution, with the beloved Washington at their head, they protected by their valour in the field, what their wisdom in the cabinet had created. We trust, sir, that there is now no danger of a repetition of those scenes of licentious riot and rebellion. We perfectly accord in sentiment with Your Honour, "that to suggest such things of New-England is not less a libel on the morals and understanding of its inhabitants, than on their patriotism;" "their character is not marked with propensities to disorder, outrage and blood." If such characters exist any where in the United States, they are not to be found among the peaceable and industrious citizens of New England.

The early habits and constant practice of our fathers and ourselves have led us, on every great emergency, and on the pressure of political calamities, to resort to town meetings, wherein the general sense of the people might be collected. This practice, so wholesome and salutary, was one of the most influential means employed in bringing about that glorious revolution which established our independence. It was against these meetings, therefore, that the strong arm of royal power was elevated, in the year seventeen hundred and seventy four, and they were prohibited under severe penalties. Had the British ministry of that day attended to the voice of the people so expressed, they would have avoided the evils which they had afterwards so much reason to de-

plore. The expression of the publick sentiment has become necessary to counteract the errours and misrepresentations of those who have falsely inculcated upon the administration of the general government, a belief, that the measures they were pursuing were satisfactory to the people. From the suppression of these meetings would liberty have more to apprehend than from any other cause whatever. From such a cause should we most dread "the overturning the splendid edifice erected by the wisdom and valour of our fathers." A privilege so wisely secured by our constitution, we cannot hesitate to declare, the citizens of Massachusetts will never resign.

We are perfectly aware that "misrepresentations, groundless suspicions, violent and indiscriminate abuse," are the rank weeds of a free government and an unrestricted press. Perhaps no country has afforded more fatal examples of such misrepresentations, than our own. It is by the use of such means factious and designing men always rise to power. The instructive page of history is crowded with examples. In some countries we have seen political partizans clandestinely supporting these vehicles of slander and calumny; by their agency blackening the reputation of a meritorious and successful rival, for whom in the face of the world they professed the greatest personal consideration and respect. The object once gained, however, it has always been the practice of low ambition to disavow the means by which it mounted. In our country we congratulate Your Honour that every citizen has a temple of refuge in the laws. To these and an independent jury he may safely flee for protection from the poisonous breath of political slander and detraction.

In the description which Your Honour has drawn of the situation of our country previous to the adoption of the federal constitution, we cannot but observe the very strong resemblance which it bears to the picture of the present times. "Our government humbled and inefficient, our union a thread, our

commerce unprotected, our revenue nothing, individuals embarrassed, grievances complained of, our rulers censured, town and county resolutions published, combinations formed, non-compliance with the laws announced, property sold for one third its value, the insolvent imprisoned, and the courts of justice stopped;" that this description applies to the present state of parts, if not the whole, of our country, we believe will not be denied. Whence comes it, that from a state of the most flourishing prosperity, a few months should have produced a change so truly astonishing? It is not in the restless and unsteady habits of a people, till lately contented and happy, that we must look for the causes of these frightful calamities; it is in the pernicious and dreadful consequences of this shallow system of embargo and non-intercourse, that we shall find the fruitful source of our country's ruin.

We do most sincerely hope that neither Virginia nor any other state may ever succeed in "dictating measures to Congress, and by a convulsed state of things force their adoption." However such an usurpation might, from various causes, endure for a time, the returning good sense of the people would eventually restore the equilibrium, and effectually prevent those tempestuous scenes which Your Honour has so eloquently described. "The importance and the interesting and perilous nature of the crisis," have excited the most alarming reflections in our minds: and we doubt not that every member of the legislature will devote himself to the arduous, yet necessary duty of "devising some reconciling expedient to quiet the agitated minds of our citizens," and relieve them from the weight of these unconstitutional restrictions.

The House of Representatives derive peculiar satisfaction from contemplating the patriotism, order and discipline of our militia, and look with confidence to this establishment for a sure defence of their country and its rights. Such a bulwark will always

render "standing armies in time of peace" unnecessary for protection; and inadequate for usurpation or subjection at any time. So long as the militia system shall be deemed susceptible of improvement, so long will it be the favourite object of legislative aid, and shall meet the early and persevering attention of the House of Representatives. So far as it lies in our power we will take care that it shall be "capable of moving and being moved without mortifying delays and dangerous collisions." Nothing will more subserve this desirable end than the preservation of that discipline upon which depends the regularity and precision of all military movements. A vigilant regard also to those military judgments (upon which depend the pride and honour of a soldier) will tend greatly to inspire confidence in our officers, to procure obedience in their men, and restore to the system that harmony which constitutes its perfection.

The House of Representatives have remarked, with much anxiety, an evil of growing magnitude in the accumulation of depreciated and counterfeited bank bills; the alarming height to which this evil has arisen, loudly calls for some remedy; and although "the want of a foreign market for the produce of our farms," and the total suspension of our commerce, afford fewer opportunities for witnessing impositions, yet no doubt the number of persons who resort to dishonest practices, with our paper currency, is much increased by the peculiar situation of the country. That ingenuity which is driven from the pursuits of honest industry and labour, frequently seeks a refuge from poverty in the paths of vice.

It has always been the practice of the legislature of Massachusetts, to extend the fostering hand of encouragement to all manufactures undertaken within the commonwealth, with any prospect of success, or publick utility. The House of Representatives will be happy upon every fair occasion, to continue

this laudable custom, and will seize the earliest moment, which is free from other occupation, to deliberate upon this important subject, and to devise such plans as will best promote the object in view.

Good publick roads certainly afford very great facilities to husbandry, commerce and manufactures; and Massachusetts in this respect, is not behind any portion of the United States. It is matter of much satisfaction to the House of Representatives that these advantages have been obtained by the voluntary exertions and enterprise of our fellow citizens, without resorting to the general government for any aid from that superfluous wealth with which we are officially informed, the national treasury overflows. In a period of general prosperity, encouragement to the ornamental planting of our publick roads would certainly be entitled to some attention from the Legislature, but at this awful crisis, when our very existence as a nation is almost in question, it is respectfully submitted to Your Honour, whether the occupation of much time on this subject might not be considered by our constituents as trifling with the publick expectations.

To cherish the interests of literature, at all times, and under all circumstances, the House of Representatives will consider among the first and most pleasing of their duties. Upon this subject we shall always be ready most cheerfully to co-operate with Your Honour.

The House of Representatives accept with gratitude, and reciprocate with perfect sincerity, the wish which forms the conclusion of Your Honour's address, and prays Your Honour to be convinced that nothing, on their part, shall be wanting to bring the session to a termination consistent with the wish so devoutly expressed.

REPORT

OF THE JOINT COMMITTEE ON PETITIONS.

In SENATE, *Thursday, Feb.* 1.

THE committee to whom were referred the petitions of sundry towns in this commonwealth on the subject of the embargo, and other subjects connected therewith, have paid the earliest possible attention to the very important and interesting subjects therein mentioned. These numerous representations, made as if by one consent from different parts of the country, afford strong proof of the injustice and impolicy of the measures complained of, and exhibit a striking display of the disastrous consequences of those measures. The members of the legislature, having lately assembled from all quarters of the state, cannot require any new evidence of the grievances which are universally oppressing their fellow citizens. The committee, therefore, instead of dwelling on the picture of private distresses, or enumerating the disgusting catalogue of publick wrongs, displayed in these petitions, have proceeded to analyze the whole, to select the leading subjects of complaint, and to consider whether there be any remedy within the power of this present legislature.

The principal subjects of complaint in all these petitions may be comprised under these general heads.

First, The impolitick, unnecessary and unconstitutional interdiction of commerce, by the several acts of the Congress of the United States, falsely called embargo laws.

Secondly, The apprehension that the nation is to be speedily plunged into a war with Great Britain; and consequently entangled in a fatal alliance with France.

Thirdly, Some peculiarly oppressive and unjust provisions of the last embargo act, passed on the ninth day of January in the present year.

The first of these subjects has been repeatedly under consideration before the legislature of this state. And here the committee cannot avoid observing that the misapprehension of our true interests and feelings by some of our representatives in Congress, must have contributed very much to the continuance of these embargo acts. The government of the United States would not probably investigate very critically those rights, which appeared to be abandoned or disregarded by those who were peculiarly entrusted with their defence: and they must, from the same cause, have been led into the greatest mistakes as to the feelings and dispositions of the people. Even if the constitutionality and justice of these measures had been less questionable, it is impossible to believe that they would have been so long persevered in, if the government of the United States had been early and truly informed of their ruinous operation on the commercial states, and the universal disaffection they excited among the people.

When this subject was first discussed in the legislature of this state, the opposers of the system could only reason from the general principles of our constitution, the necessities of commerce and the feelings of human nature. They depicted in strong colours the destructive tendency and consequence of this system. They have long since seen the accomplishment of their predictions; their most gloomy presages are verified by the event; and the whole people now feel and acknowledge the force of those truths, which then employed the ablest of our statesmen to explain and demonstrate.

The people of New England do not need to enter into any refined reasoning or deep research on this subject. They recollect that the extension and protection of commerce was one of their principal motives to forming the present union. This was one of the three great objects enumerated in the former articles of confederation; and the want of a competent power for this purpose in the antient government, was among the primary causes of our present constitution.

They will always acknowledge with cheerfulness and gratitude, any efforts of their brethren of the south, against a common enemy: but most certainly expectations of this kind were not among their strongest inducements to desire a union of all the states. It had long been a prevailing opinion, confirmed by the experience of the revolutionary war, that in times of great peril, the remote parts of our country would require aid from this quarter, instead of being able to afford any to it. We shall readily comply with the terms of this compact, and fulfil all the stipulations incumbent on us; and we have a right to expect at the same time from the other members of the Union, a constant respect for those rights, which we never surrendered; and attention to those interests, which the national government was instituted to extend and preserve, not to destroy.

The people of this state have been most severely disappointed in this expectation. The commerce of the country has furnished almost the whole revenue of the United States; has given vigour and energy to the government; has encouraged universal industry, and rewarded with plenty every description of people. While this commerce was thus productive to an unexampled extent, a portion of the general profit should have been applied to preparations for its permanent protection: and when it was unjustly assailed, the whole power of the nation should have been exerted for its defence. The people recollected the glorious example of a former administration in

1798, and they have seen the present administration reserving all their strength and all their energies to be employed in the annihilation of that commerce which they ought to protect. By a timid and unwarrantable compliance with the wishes of a foreign power, we are suddenly excluded from the ocean; our trade is destroyed; our industry paralyzed; and poverty and ruin are rapidly overspreading our land. Contemplating this state of things, and recollecting their views and objects at the time of adopting the constitution, the people do not require any further argument to convince them, that the primary objects of that compact are now neglected; that their most important interests are wantonly sacrificed and their most essential rights flagrantly violated.

But the committee forbear to pursue these reflections. It is painful to dwell on those evils and distresses which it is out of our power to relieve. The committee are not at present prepared to recommend any adequate and satisfactory remedy, which could be applied by the two houses of the legislature alone. The most efficient, and perhaps the only certain remedy, rests with the people, who will soon have it in their power to unite the whole government of the state in one joint effort, with other states, whose interests and objects are similar to our own, for the support and vindication of their just rights by constitutional and peaceable means.

The committee, however, being deeply impressed with the importance of this subject, and anxious, if possible, to afford some temporary alleviation to the publick distresses, ask leave to reserve this object of their commission for further consideration.

As to the second subject of these petitions—the danger of an unnecessary and ruinous war with one nation, and a destructive alliance with another—the committee, with the most painful emotions, have perceived but too much ground for this apprehension. The puerile suggestion of maintaining a war at the same time against the two great belligerent

nations, is too absurd to deserve attention. If then the United States are to select their enemy, and the choice is left to the present administration, the fears of these petitioners will eventually be realized. Even if this measure is not seriously intended by our government, yet the course of policy pursued by them, must, if persisted in, soon terminate in such a war. The committee here would observe, that an examination of the different measures of the two nations referred to, would leave them to elect the other alternative. These measures and acts are before the publick. Some of the most important of them have been so fully displayed, and thoroughly considered, in a late report to one of the houses of this legislature, that it would be equally unnecessary and improper to exhibit them anew at this time. Whatever impressions may have been felt as to the conduct of Great Britain, every man will now perceive that the aggressions of France have been uniformly first in order of time, and most injurious in their nature. The gross injustice of her decree of November, 1806, was aggravated by the consideration, that we had at that time a commercial treaty with her; while with Great Britain, in the following year, when her retaliatory orders were passed, we not only had no treaty, but had just refused to ratify one made by our own ministers; and therefore had no right to expect from the latter any peculiar respect to neutral claims which we neglected to vindicate against the encroachments of her enemy. Every man, who values the welfare of his country, and the honour of its government, must regret that the first outrage was not resisted in a manner becoming a great and powerful nation. Such a course would in any event have removed all occasion or pretence for retaliatory measures on the part of the other belligerent; and would have prevented our being embroiled at the same time with the two most powerful nations of the world. It would also have produced another most salutary effect; it would have saved us from

the danger of an alliance with France, which experience has shown is more to be deprecated than a war with any nation on the globe.

The committee cannot dismiss this subject without observing, that from the known spirit and patriotism of the people of this state, they will undoubtedly be always ready with their lives and fortunes to defend the country in any just and necessary war; but they will require of their rulers to shew them that the war is just and necessary; and from the partial disclosure made by the government, of their negotiations with these two nations, the publick, we apprehend, are by no means satisfied that a liberal and impartial policy, and a sincere disposition to conciliate, on our part, would not at once prevent the necessity of a war with Great Britain, and secure to us from that nation the entire respect that is due to all our just rights.

As to the third subject mentioned in the petitions—the late act for enforcing the embargo—the committee have examined it with great attention. The first remark it is calculated to excite is, that a system of policy which requires such violent, arbitrary and unprecedented measures to enforce its execution, must be in the highest degree repugnant to the feelings and habits of the people, if not hostile to their dearest interests. And even if this policy were admitted to be founded on the soundest reason, and the most correct motives, yet no man could justify the numerous violations of natural and civil liberty, and of constitutional rights, which are authorized by this act.

The people of this commonwealth, in establishing their constitution, have seen fit to declare and set forth certain natural rights of a free citizen, and certain fundamental principles of a free government. It is painful to observe how many of these rights and principles are violated, or disregarded, by the act under consideration.

It is declared in the tenth article of the declaration of rights, that "Each individual of the society has a

right to be protected by it in the enjoyment of his life, liberty, and property, according to standing laws." By the second section of this act of Congress, no vessel can be laden without the special permission of the collector, which that collector is authorised to grant, or refuse, at his discretion. And even when from his knowledge of character and circumstances he may think it safe and proper to grant such permission, he is prohibited from doing so, if the president of the United States shall have given instructions to the contrary. By the third section of the same act, owners of vessels already laden are required to give bonds in six times the value of the vessel and cargo, or to unlade the vessels; and even when the owner, in compliance with this unjust regulation, has procured and offered the bond required, the collector may refuse to receive it, and by his own arbitrary mandate, compel the unlading of the cargo. Thus the laws, which regulate the use and enjoyment of our property, instead of being standing and permanent, may be as mutable and uncertain as the whim and feelings of an executive officer can render them. What is allowable on one day may be unlawful on the next, and what is permitted to one citizen may, under circumstances precisely similar, be refused to another. Means and temptations will be presented to the officers of government for indulging the asperity of political hatred, and the rancour of personal resentments; and a petty tyrant may be raised in almost every town, to whose caprice or malevolence our most important rights may be subjected.

By the eleventh article of our declaration of rights it is declared "that every subject of the commonwealth ought to find a certain remedy, by having recourse to the laws, for all injuries or wrongs which he may receive in his person, property, or character." But by the tenth section of this late act, when any officer is sued on account of his proceedings under it, instead of relying on the laws, he may produce

the instructions and regulations of the president, for his justification and defence. Thus the remedy of the injured citizen may depend, not on publick laws, but on secret executive instructions; which may never have been known to the party aggrieved, till the moment when they are thus produced to defeat his constitutional remedy.

The constitution of the United States, as well as that of this state, expressly prohibits unreasonable searches and seizures of the persons, houses and effects of the citizen. Yet by the ninth section of this act, every collector is authorized in the broadest terms to seize any property, not only when in carts or other carriages, but when *in any manner* apparently on its way towards the territories of a foreign nation, or the vicinity thereof; and he may detain it until bond is given, the amount of which is not limited by the act, and of course he is left to the arbitrary discretion of the officer. It is obvious that the terms of this section do not confine the collector to a seizure in cases only when the goods are in *actual motion* towards the suspected place. Of course there is no limitation to this tremendous power; and he may seize effects in any dwelling house in which they may have been deposited, if he chooses to suspect any ulterior destination, and so to conclude that they are in *that manner apparently on their way towards a foreign country*. This provision in both the constitutions referred to, evidently contemplates the necessity of a warrant to authorize these searches and seizures; which is to be issued by a civil magistrate upon probable cause, supported by oath. But under this section, the collector is made the only judge; no oath, no civil process, no formalities, are required. His only warrant is his own despotick will; and this may be executed, not by a peace officer of the government, but by a file of soldiers from the standing army.

Both these constitutions reprobate the exacting of excessive bail or sureties, and the imposing of exces-

sive fines. If the general objects of these acts were in a high degree salutary, and generally approved, yet most men, it is believed, would agree that the fines they impose are in many instances excessive. But the amount, for which the citizen is required to give bonds with sureties, by many different sections of this act, is most manifestly a violation of the spirit and principles of these constitutional provisions. The smallest sum mentioned is six times the value of the goods, and in a case before alluded to, there is no limitation whatever; and a collector may demand sureties to any amount which his arbitrary will deems fit. It should be observed too, that in these cases the party is not charged with a previous offence, or even with intention to commit any; but all this security is deemed a necessary precaution against future possible offences by the most peaceable and orderly of our citizens.

Both these constitutions expressly sanction that principle of natural justice, that no man ought to suffer for actions which were lawful at the time of committing them. But by the third section of this act, many citizens are exposed to heavy pecuniary losses, are required to furnish excessive sureties, or finally to suffer a forfeiture of their property: and all this in consequence of proceedings, which were not only allowable, but expressly sanctioned by the laws of the United States, and specially permitted by their officers.

By the seventh section of this act, the owner of a vessel is made responsible for the inevitable accidents of navigation, and even for depredations of a foreign power on the ocean. The only mode of defence allowed, will be found in most cases physically impossible. The party must produce the whole surviving crew on the trial, who must all be sworn as *competent witnesses*. If any one of them should accidentally be absent; if he should die in a remote part of the world, and his death not be clearly proved; if he should have any interest in the

event of the trial, which would prevent his being a *competent witness;* if he should by the visitation of Providence have become insane, and incapable of testifying; if he should have become convicted of any crime which would authorize the rejection of his testimony; or finally, if he should be suborned, concealed, or spirited away, by any corrupt officer of the customs; in each of these cases, the innocent owner, in addition to the loss of his vessel and cargo, will be sentenced to pay the whole penalty of his bond, amounting to six times the value of the property he has lost.

In the tenth section of this act it is pretended to furnish a remedy for any unjust proceedings of the collectors. The party aggrieved is not indulged with a trial by jury, but must apply to a single judge of the United States Courts. If the judge should consider a seizure as altogether unnecessary and unjust, he cannot restore the property without receiving such bond as the act prescribes to be taken by the collector in the same case; in which event the aggrieved party will have obtained no redress whatever; and if the judge should otherwise determine, the complainant is liable to treble cost.

The committee will notice only one other part of this act which appears to be as dangerous to the publick peace as it is injurious to publick liberty. By the eleventh section, the president, or any person empowered by him, may employ any part of the land or naval forces, or militia to enforce the execution of the embargo laws, and to prevent and suppress all opposition to them. Without commenting on the loose and indefinite description of the objects to which this military force is to be applied; the committee would remark, that almost every power given to the collectors may be enforced at the point of the bayonet; excluding the aid and the interference of the laws and magistrates of the country. The military power will no longer, in the language of our constitution, "be in subordination to the civil au-

thority." And we are liable, at any moment, by the indiscretion of a petty executive officer, to be subjected to military despotism, or to be involved in all the horrours of civil warfare.

On viewing these provisions of the act under consideration, the committee do unequivocally declare their solemn conviction, that it is in many particulars, unjust, oppressive, and unconstitutional. They would by no means contend that this opinion, if confirmed and adopted by the legislature, would be decisive of the question. While the laws continue to have their free course, the judicial courts are competent to decide this question, and to them every citizen, when aggrieved, ought to apply for redress. It would be derogatory to the honour of the commonwealth to presume that it is unable to protect its subjects against all violations of their rights, by peaceable and legal remedies. While this state maintains its sovereignty and independence, all the citizens can find protection against outrage and injustice in the strong arm of the state government.

Any forcible resistance, therefore, by individuals, to the execution of this act of Congress, is not only unnecessary, but would be highly inexpedient and improper; it would endanger the publick peace and tranquillity, and tend essentially to injure and put at hazard that cause, on which nearly the whole people are now so zealously united. The committee are deeply sensible of that accumulated distress which has so long oppressed the whole community, and borne with peculiar aggravation on some particular parts of it. They cannot too highly applaud the unexampled patience and forbearance which has been already exhibited under this pressure of undeserved calamities. And they would earnestly recommend the exercise of the same forbearance, until all those peaceable and orderly means which the constitution and laws of our country will permit, and all those political expedients, which our habits and usages can suggest, shall have been exhausted in vain.

It is to be regretted that no immediate and efficacious remedy can now be proposed for these numerous and aggravated evils. The committee, however, consider it their duty to recommend, without loss of time, all such measures as have appeared to them to be now practicable, and calculated to remove or alleviate the publick distress; they therefore ask leave to

Report in part, A bill to secure the people of this commonwealth against unreasonable, arbitrary and unconstitutional searches in their dwelling houses—and also the following

RESOSUTIONS:

Resolved, That the act of the Congress of the United States passed on the ninth day of January in the present year, for enforcing the act laying an embargo, and the several acts supplementary thereto, is, in the opinion of the legislature, in many respects, unjust, oppressive and unconstitutional, and not legally binding on the citizens of this state. But notwithstanding this opinion, in order finally to secure a certain and permanent relief, it is earnestly recommended to all parties aggrieved by the operation of this act, to abstain from forcible resistance, and to apply for their remedy in a peaceable manner to the laws of the commonwealth.

Resolved, That a suitable remonstrance be prepared, and immediately forwarded to the Congress of the United States, from this legislature, expressing their opinions and feelings on the several subjects of complaint contained in the said petitions, and particularly urging the repeal of the said act of Congress, passed on the ninth of January last.

Resolved, That the legislature of this commonwealth will zealously co-operate with any of the other states, in all legal and constitutional measures, for procuring such amendments to the constitution of the United States, as shall be judged necessary to ob-

tain protection and defence for commerce, and to give to the commercial states their fair and just consideration in the government of the Union; and for affording permanent security, as well as present relief, from the oppressive measures under which they now suffer.

Resolved, That the honourable the president of the senate, and the honourable the speaker of the house of representatives, be requested to transmit a copy of this report, and the resolutions thereon, to the legislatures of such of our sister states, as manifest a disposition to concur with us in measures to rescue our common country from impending ruin, and to preserve inviolate the union of the states.

MR. CROWNINSHIELD'S RESOLUTIONS.

Commonwealth of Massachusetts.—In the House of Representatives, Nov. 16, 1808

RESOLVED, as the sense of this house, that the British Orders in Council, of November, 1807, interdicting all neutral trade with France, and the nations under her controul, except the neutral shall first enter her ports, and there receive her licence to proceed, and pay such duties as they shall and have imposed; and the Decrees of France, interdicting all trade with the English nation and her dependencies, and subjecting to capture and condemnation, all neutral vessels, and their cargoes, for the absurd cause of being spoken with, or visited, by force, by her enemies, are violations of the neutral rights of the United States, and their independence and sovereignty, and if they cannot be removed by fair negotiation, ought to be resisted by all the means in their power.

RESOLVED, That in case it shall appear to Congress that all fair attempts to remove said Orders and Decrees by negotiation, shall have been exhausted, and they shall find it necessary to assume any other attitude of resistance, it will be the duty of the whole people of the commonwealth of Massachusetts, to rally round the standard of their own nation, and its government, and to afford them their utmost support by all constitutional means in their power.

REPORT.

The committee, to whom was referred the two resolutions that accompany this report, and which were proposed for the consideration of this house, have duly attended to their commission, and ask leave to report, that, in their opinion, it is inexpedient to pass the same, for the following reasons.

BY the constitution of the United States, the foreign relations thereof are exclusively vested in the

national government—with that government rests the obligation to consider of, and act upon, the doings of other nations—with it rests also a knowledge of the conduct of other nations—their motives and pretensions, and how far the same may have been sanctioned or encouraged by the government of the United States.

The communications which have passed between the United States and the nations referred to in the proposed resolutions, are in a great degree unknown to the legislature of Massachusetts; any opinion, therefore, of the House of Representative on this subject, would be founded on an imperfect knowledge of what relates thereto, and might, from the same cause, be erroneous.

The house could not rely on the partial information which is allowed to escape from the executive cabinet, much less on that diminished portion with which the citizens or legislature of Massachusetts are deemed worthy to be entrusted, from the secret sessions of Congress, for the correctness of any opinion they might form on so important a matter. Influenced by the limited information with which the government of the Union has seen fit to indulge the publick, some persons might be induced to adopt the sense of the first resolution, and conclude, that both nations therein mentioned, had, at the same time, with equal wantonness, and like disregard of our rights and their duties, enacted the offensive decrees and orders—that the same measure of opposition, to both nations, was alike required by the dignity and interests of the United States, and would be attended with similar effect—whereas a complete understanding of the conduct of our government towards these nations, and of our relations to each of them, with the grounds or pretence for passing their several decrees and orders, might lead to a different result, in the minds of men who endeavoured only to arrive at a correct and impartial judgment.

While the committee entertain no doubt of the

soundness of the above reasons for the opinion they have offered on the inexpediency of adopting the proposed resolutions, yet, as from the language of the same, it would appear to be the sense of the mover, that the same motives and causes produced, from both foreign nations, the decrees and orders complained of, it may be advisable to state such information, both as to the dates of the several decrees and orders, as well as to the alledged grounds of passing the same, as have come to the knowledge of your committee. It is also important that the House should be possessed of whatever information can be procured on a business so interesting to them, and which is made a pretence for the deep and universal calamities, which the government of the United States has seen fit to inflict on the citizens—calamities, which press with peculiar and aggravated distress on the good people of Massachusetts.

It will readily be conceived that the decrees and orders, intended by these resolutions, are that of France, promulgated at Berlin the 21st of November, 1806; and the orders of Great Britain, passed at London on the 11th of November, 1807.

The French decree declares, that the British islands, their colonies and dependencies should be considered as in a state of blockade—that all trade in British goods, should be prohibited, and that all vessels, with their cargoes, sailing to or from Great Britain, or having on board cargoes of British origin, should be subject to seizure and confiscation. On the 31st December, 1806, certain commissioners of the British government, having then just concluded a treaty with a minister of the United States, which treaty was never submitted to the senate for their advisement, by direction of their government, presented a memorial to the American minister, in which it was distinctly declared, that if the enemy (referring to the emprour of France and the decree of November, 1806) "should carry his threats into execution, and if neutral nations should, contrary to all expecta-

tion, acquiesce ic such usurpations, his majesty might probably be compelled, however reluctantly, to retaliate in his own just defence, and to issue orders to his cruisers, to adopt, towards the neutrals, any hostile system to which those neutrals should have submitted from his enemies." On the tenth of January, 1807, his Britannic Majesty issued an order for preventing all commerce from port to port of his enemies, comprehending in said order, not only the ports of France, but those of other nations, as, either in alliance with France, or subject to her dominion, have, by measures of active offence, or by the exclusion of British ships, taken a part in the present war. In the letter which accompanied the communication of this order to the secretary of state of the United States, this order is stated, by the British minister, to be authorized by the acknowledged principles of the law of nations, and to have been induced by a knowledge, on the part of the British government, that the measures announced, by the decree of the French government of the 21st November 1806, had already, in some instances, been carried into execution, by the privateers of his enemy.

The American minister at Paris, in the month of December 1806, requested of the French minister of Marine, an explanation of the decree of the 21st of November, preceding, and was answered that "an American vessel could not be taken, at sea, for the mere reason that she was going to or coming from a port of England." The French minister of marine, however, advised the American minister, that it was proper that he should "communicate with the minister of exterior relations, as to what concerned the correspondence of the citizens of the United States of America with England." Another article, declaring all merchandize belonging to England, or coming from its manufactories, or colonies, though belonging to neutrals, liable to seizure, was to be carried into execution. This it seems was to be acquiesced in by the American government, if to operate

only in the ports of France, as conformable to publick law, although in direct contravention to the stipulations of an existing treaty between the United States and the emperor of France.*

Notwithstanding the hopes that were indulged by the American government, in consequence of the reply of the French minister, it appears, from a letter of Mr. Madison to Gen. Armstrong, that, as early as May, 1807, it was known in the United States, that the French privateers in the West Indies had, in virtue of the edict of November, 1806, committed depredations on the American commerce—and in October, 1807, an American ship called the Horizon, bound from Great Britain to Lima, having been wrecked within the territorial jurisdiction of France, was finally condemned under the French decree of November, 1806.

If any doubt ever existed, as to the intention of France, to execute this decree against the United States, it must have been removed, after the conduct of her cruisers in the spring of 1807—her condemnation of the Horizon, in the following October, left not the smallest pretence for questioning, that her violence and injustice would be limited only by her power.

The pretensions of the emperour of France, that his decrees were a retaliation on Great Britain, for similar violations of the laws of nations, previously committed by her, through the commerce of neutral nations, could never be admitted as true in fact, or if true, as just in principle, in regard to the United States.

The principle said to have been assumed by Great Britain in 1756, which has been pressed into the service of those who are desirous to find an apology, if not a justification, of every outrage committed by France, although adopted in the early part of the last war, was so modified as to afford no cause of com-

* See page 15 of Madison's letter to Armstrong

plaint to the United States during the latter years of that contest, and it is believed, that a similar temper of accommodation has been manifested by the same power to the United States, in the present war.

While it has been said "that Great Britain is the only nation that has acted upon or otherwise given a sanction to it," the edicts of France from 1704 to the present day, with but small intervals of deviation, either in principle or practice, declare the reverse.

The Decrees of France in 1704 and 1744 declare all goods, of the growth or fabrick of an enemy's country, liable to confiscation, unless bound from an enemy's port direct to the port of the neutral owner. An ordonnance by the court of France, delivered to the States General of the United Provinces, and published by authority in the Utrecht Gazette, July, 1756, declares, if any Dutch ships carry any goods or merchandize of the growth or manufacture of the enemies of France, they shall be esteemed good prize, but the ships shall be discharged. On the 9th of May, A. D. 1793, France authorized the capture of neutral vessels, laden with provisions belonging to neutrals, but bound to enemies' ports. This decree was prior, by one month, to the order of Great Britain, of similar import. On the 23d of the same month, she declared it should not extend to American vessels, which latter decree she repealed on the 28th of the same month of May, and the first remained in force. On the 1st July she again decreed as on the 23d May. Twenty-seven days afterwards, this decree was repealed, and that of the 9th May remained in force until 4th of January, 1795. On the 27th of November, 1796, the French commissioners at Cape Francois authorized the capture of all American vessels bound to or from English ports. February 1st, 1797, commissioners at Cape Francois ordered the capture of all vessels bound to any port in the West Indies, delivered up to the English, and all vessels, cleared out generally for the West Indies.

In January, 1798, France declared that the condi-

tion of ships in every thing, which concerns their character as neutrals or enemies, shall be determined by their cargoes, and every vessel found at sea, laden in whole or in part with merchandize, coming out of England, or its possessions, shall be declared good prize, whoever may be the proprietors of such commodities or merchandize, and this decree is founded expressly on the ordonnance of 1704.

It is therefore an incontrovertible truth, that France, from the earliest time, and certainly prior to the year 1756, has adopted, in principle and practice, broader rules for limiting the commerce of neutrals, and condemning their property, and with fewer and shorter intervals of regard to their rights, than has been assumed by her enemy, and of course could on no ground be justified by the pretence, that the decree of November, 1806, and the subsequent one of Milan, condemning the property of neutrals, because the vessels had been spoken with by British cruisers, were a retaliation for similar violations of publick law by her foe.

The second resolve proposed assumes as a fact, that the measures adopted by the Congress of the United States in the last year, which were the acts imposing an embargo on the trade of her citizens, were measures of resistance against France and Great Britain. An assumption, which would be scarcely decent for this legislature to adopt, when the president has pledged his word, which ought to be sacred, to both these nations, that they were not measures of hostility, as appears by the letter of the secretary of state to the minister of the United States at the court of France, under date of February 8, 1808, and by a similar letter to our minister at the court of London, under date of December 23, 1807.

And surely the legislature of Massachusetts would be altogether unmindful of its duties, should they attempt to pledge the people of this commonwealth to sanction any measures the Congress might see fit to adopt, after the fatal experience of their measures for

the last year—measures which, however intended, have produced only distress and wretchedness at home, disgrace and degradation of our national character abroad.

A short review of the circumstances and condition of the United States, from the adoption of the present constitution, and the conduct of the different administrations under them, may serve to shew what the interests and honour of the nation did, and do require to be done, on the part of our government.

It is well known, that, when Congress first assembled under the existing constitution, the administration was encompassed with the most serious embarrassments at home and abroad—embarrassments arising out of the waste of capital, the defect of credit, and the want of revenue, at the conclusion of the war—embarrassments, proceeding from the reciprocal claims of the United States and Great Britain, relative to the execution of the treaty of peace—embarrassments concerning the navigation of the Mississippi; and embarrassments, aggravating all such as before existed, which arose out of the French revolution, and that were followed by extensive depredations, committed on our commerce by England, by France and by Spain.

With these obstacles to contend with, the peace and neutrality of the nation were impartially asserted, and maintained—with England, our antient controversies were satisfactorily adjusted—the posts on our frontiers were given up—Indian wars extinguished—adequate compensations, for depredations committed upon our trade, obtained, and the national faith redeemed, by provisions for the final settlement of British debts. By Spain, our right to the navigation of the Missisippi was recognized, and indemnity secured for the illegal capture of our vessels.

With France a new treaty was concluded, annulling her unjust decrees, granting us security, as far as the faith of nations can be so considered, against their future re-establishment, and containing her

submission to the act of Congress, which declared the old treaties void, by reason of their violations on her part.

Thus with foreign nations our antient controversies were adjusted, and those of a recent date, and which had grown out of a fierce and unexampled war, were composed.

At home, agriculture, manufactures, the fisheries, navigation and commerce, were encouraged and extended—the credit of the nation was revived, its capital enlarged, its revenue established—the publick arsenals were replenished, a naval force created, and the American name upheld and revered throughout the world.

In this condition of unexampled prosperity at home, and of peace and consideration abroad, our present rulers were called to the administration of the publick affairs—and what has been the fruit of their labours? Let the following facts answer:

Our agriculture is discouraged,

The fisheries abandoned, and

Navigation forbidden—

Our commerce at home restrained, if not annihilated;

Our commerce abroad cut off, and

Our navy sold, dismantled, or degraded to the service of cutters and gun boats;

The revenue extinguished,

The course of justice interrupted,

The military power exalted above the civil, and by setting up a standard of political faith, unknown to the constitution, the nation weakened, by internal animosities and division, at the moment when it is unnecessarily and improvidently exposed to war with Great Britain, France and Spain.

So great a change, accomplished in so short a time, is unexampled even in the history of weak and unfaithful administrations, and can have proceeded only from the want of that capacity, impartiality and prudence, without which no government can long

preserve the prosperity, or the confidence of the country.

The dawn of the present administration promised an impartial and patriotick course, and the citizens anticipated a continuance of the publick and private enjoyments which distinguished our land; but these expectations were soon disappointed, by the avowal of a system of political persecution and proscription which has interrupted the harmony of good neighbourhood, and gone far to destroy the happiness of social intercourse.

The conclusion of the late war in Europe afforded a favourable opportunity to enter into negotiations, for the purpose of establishing such maritime provisions as, in the event of future war, would secure the navigation and trade of the United States against a repetition of the injuries they had so lately suffered. This opportunity was wholly neglected, and the commercial and maritime treaty with Great Britain, the first naval power in the world, was suffered to expire without a single attempt, that we have ever heard of, to obtain its renewal.

The war in Europe recommenced in 1803, and thereby our commerce was again exposed to interruptions upon the ocean. These served as matter of ineffectual remonstrance until 1806, when France passed the decree of Berlin, thereby violating the provisions of her treaty with the United States, infringing the law of nations, and prostrating the commercial rights of all neutral states.

This decree is substantially and almost literally the same as that passed by the French Directory in 1798, and which president Adams in his speech to Congress in December following, pronounced to be "an unequivocal act of war, which interest, as well as honour, called on the nation firmly to resist."

Congress accordingly proposed to pass laws, annulling the treaty with France, prohibiting all commercial intercourse with the French dominions, and providing the equipment of a naval force, for the defence of our just rights.

The country cannot have forgotten the protection afforded to trade by these measures, so honourable to the nation—measures by which our flag was respected in every sea, and the skill and courage of our officers and seamen displayed in battle with the ships of France.

It was in consequence of these decisive acts, that an early communication was made to our government, of the desire of France to return to the relations of peace and to the authority of publick law, and the convention, which was soon after concluded by our government, with the person who now sways the sceptre of France, accomplished those important objects.

Had our rulers, after the promulgation of the decree of Berlin, followed the example of their predecessors, the English orders would not have been issued, nor should we now have to deplore the distress that afflicts the country.

If, then, these evils might have been avoided, by imitating the example of 1798, may they not yet be removed, by retracing the erroneous steps which have been taken, and by adopting *now* those measures which *then* proved efficacious?

To this end, let Congress repeal the embargo, annul the convention with France, forbid all commercial intercourse with the French dominions, arm our publick and private ships, and *unfurl the republican banner against the imperial standard.*

This done, the English orders would cease to operate, we should hear no more of the unparalleled folly of contending, at the same time, with all the great powers of Europe—our trade to every region of the globe, except France and her dependencies, would again recover and flourish—our agriculture would feel the influence of the emancipation of trade, and hand in hand with general prosperity, the revenue of the nation would once more exceed its expenditure.

Therefore *Resolved*, That it is inexpedient for this house to adopt and pass the resolutions proposed.

By order of the committee,

C. GORE.

REPORT

Of a Committee of the House of Representatives,

RESPECTING CERTAIN MILITARY ORDERS ISSUED BY HIS HONOUR *LEVI LINCOLN*, LIEUTENANT-GOVERNOUR AND COMMANDER IN CHIEF OF THE COMMONWEALTH OF MASSACHUSETTS.

THE committee appointed "to inquire what military orders have been issued by His Honour the lieutenant governour of this commonwealth, or by the adjutant general, for the purpose of calling on the militia of this commonwealth to enforce the embargo laws, and the manner in which such orders have been issued and executed," with orders "to proceed on said business, and report on the subject at large to this house as soon as possible," have attended to that service, and ask leave to report—

That on the first day of February instant, military orders were issued though the adjutant general's office, by His Honour Levi Lincoln, lieutenant governour and commander in chief of this commonwealth; a copy of which orders accompanies this report.

They find by the statement of the adjutant general, that these orders were directed and sent to the following officers severally, viz. Thomas Badger, lieutenant colonel commandant; Charles Turner, lieu-

tenant colonel; Ebenezer Lothrop, brigadier general; David Nye, lieutenant colonel; Baker Loring, Ebenezer Bowditch and Thomas Williams, captains; James Brickett, major general; Charles Bean, Simon Nowell and Moses Bradbury, captains; James Merrill and Charles Thomas, lieutenant colonels; Joshua Danforth, captain; Samuel Reed, lieutenant colonel; and John Cooper, brigadier general: with the exception that the following words were not inserted in the order sent to Colonel Badger; which the adjutant general states to have been omitted by mistake, viz. "Recollecting that in the happy government established by the American people, the character of the citizen is not lost in that of the soldier, and that coolness, firmness, prompt obedience, and a sacred regard to the rights of society and individuals are essential to both; you will duly appreciate this opportunity of serving your country, and of even increasing the confidence she has placed in you."

Your committee find that the officers above named were designated and appointed as "the militia officers" near several ports of entry within this commonwealth, "to whom the collector of the district is to apply, if it shall be necessary, to accomplish" the "purposes of the national government," as "specified" in the orders. They are required to "be prepared and hold themselves in readiness with those under their command, armed and equipped, at the call of the collector, and subject to his discretion, to aid him with their whole force, or such part thereof as may be sufficient to enable him within his district to discharge his duties, prevent disorders and opposition to the authority of government, and carry the aforesaid laws into execution;" and to "make correct muster and pay rolls of such militia as shall be employed in actual service, and transmit the same to the war department of the United States."

The places of abode of the officers, and the ports of entry comprised within their several commands,

are stated in a schedule from the adjutant general's office, accompanying this report.

Your committee find, according to the statement of the adjutant general, that an officer has not been appointed "in or near to each port of entry within this state." No officer has been appointed, according to his statement, whose command appears to extend to either of the ports of Castine, Frenchman's Bay, Nantucket, Dighton or Gloucester; unless the name of Gloucester ought to be added in the schedule to the names of Newburyport and Ipswich, opposite the name of General James Brickett, of Haverhill; which the adjutant general "believes" ought to be the case, and which he says was accidentally omitted.

It will be seen by the said schedule, that Machias, Passamaquoddy, and Moose Island, were all placed opposite the name of brigadier general John Cooper, of Machias. By the same document it appears that the number of *infantry*, rank and file, of the entire command of the general and field officers afore named, amounts to fifteen thousand two hundred and sixty nine. The adjutant general does not state whether there are troops of any other description under their command. Your committee could not ascertain the number of men under the command of the seven captains, thus appointed, because the returns of companies never appear in the adjutant general's office.

Contrary to military custom and the uniform usage in this commonwealth, the orders to the brigadier generals, lieutenant colonels and captains were sent directly to them respectively, without passing through the hands of their superiour officers, and without consulting them, or giving them any notice of the same.

The adjutant general informed your committee, that he had seen a letter from the secretary at war to His Honour the lieutenant governour, upon the subject of these appointments, but that he had no copy of the same; and that he believed it had always been

the practice with other governours of this commonwealth, to retain any communications to them from the secretary at war of the United States.

Your committee did not think it expedient to apply to His Honour for any communications which he might have received from the president or the secretary at war.

Your committee, under the injunction to report as soon as possible, have confined their inquiries respecting the manner in which the orders of His Honour have been executed, to the district of Boston and Charlestown. They find that Colonel Badger received the orders of the commander in chief on the second or third of February instant; that by an order dated the seventh instant, he directed the commissioned officers under his command, to meet on the following evening on military business; that the officers having accordingly convened, the orders of the commander in chief were read to them, and they were required to hold themselves in readiness to march at a moment's warning with the men under their respective commands, for the purpose of enforcing the embargo laws, agreeable to the said orders.

Your committee find some of the officers so convened, belonged to a detachment consisting of five companies, with a suitable proportion of officers, which had lately been detached from said Colonel Badger's command, and put under the command of Colonel Barnes, of Roxbury; and that they form a part of the one hundred thousand men lately drafted for the service of the United States. Application was made to Colonel Badger, by some of his officers, at the time of said meeting, and afterwards, for a copy of said orders, but they could not obtain them. Application was also made to the adjutant general for a copy of the orders, but without success. It was stated to your committee, both by the adjutant general and Colonel Badger, that doubts have been entertained respecting the authority of the naval offi-

cer of the district of Boston and Charlestown; he had not been informed of these orders, and it was intimated that these circumstances had prevented the circulation of the orders in the usual mode.

Your committee find that by the constitution of the United States, Congress is authorized "to provide for the calling forth the militia to execute the laws of the Union, suppress insurrections and repel invasions;" and that the president is the "commander in chief of the army and navy of the United States, and of the militia of the several states, *when called into actual service of the United States.*"

Your committee also find that by a law of the United States, passed Feb. 28, 1795, entitled "An act to provide for calling forth the militia to execute the laws of the Union, suppress insurrections and repel invasion, and to repeal the act now in force for those purposes," it is enacted, "that whenever the laws of the United States shall be opposed, or the execution thereof obstructed in any state, by combinations too powerful to be suppressed by the ordinary course of judicial proceedings, or by the powers vested in the marshal by this act, it shall be lawful for the president of the United States to call forth the militia of such state, or of any other state or states, as may be necessary to suppress such combinations, and to cause the laws to be duly executed; and the use of the militia so to be called forth may be continued, if necessary, until the expiration of thirty days after the commencement of the then next session of Congress:" "*Provided always*, that whenever it may be necessary in the judgment of the president to use the military force hereby directed to be called forth, the president shall forthwith, by proclamation, command such insurgents to disperse and retire peaceably to their respective abodes within a limited time."

Your committee find that when there was an insurrection in the western parts of Pennsylvania, in the year 1794, and the insurgents finally perpetrated acts which amounted to treason, being overt acts of

levying war against the United States; President Washington then proceeded most scrupulously, in conformity to the act of Congress then in force, "to provide for calling forth the militia, to execute the laws of the Union, suppress insurrections, and repel invasions;" and troops were called forth from several states, at the request of the president, by the governours of the same, in the usual manner, according to the law and custom. The committee presume, however, that it will be readily perceived that nothing in the constitution or laws of the United States authorizes the president, under the existing circumstances, to call forth the militia of this state, or any part thereof.

By the tenth section of an act of Congress passed January 9th, 1809, it is provided, "That it shall be lawful for the president of the United States, or such other person as he shall have empowered for that purpose, to employ such part of the land or naval forces, or militia of the United States or the territories thereof, as may be judged necessary, in conformity with the provisions of this and other acts respecting the embargo, for the purpose of preventing the illegal departure of any ship or vessel, or of detaining, taking possession of, and keeping in custody and guarding any specie or articles of domestick growth, produce or manufacture; and also for the purpose of preventing and suppressing any armed or riotous assemblage of persons, resisting the custom house officers in the execution of the laws laying an embargo; or otherwise violating, or assisting and abetting violations of the same."

The present Legislature of this commonwealth have "Resolved, that the said act of Congress, passed on the ninth day of January, in the present year, for enforcing the act laying an embargo and the several acts supplementary thereto, is in the opinion of the legislature, in many respects unjust, oppressive and unconstitutional, and not legally binding on the citizens of this state."

But even if this act were admitted to be constitutional, your committee do not find that by the said act, Congress have provided any new mode of calling forth the militia; and they conceive that the militia cannot *legally* be "employed" by the president of the United States, or by any person empowered by him, till they have been called forth in the mode which congress had previously prescribed.

Your committee find that by the constitution of this commonwealth, chap. ii. sect. 1, art. 7, the governour is "entrusted" with all the "powers incident to the offices of captain general and commander in chief and admiral, to be exercised agreeably to the rules and regulations of the constitution *and the laws of the land, and not otherwise.*"

The same constitution, bill of rights, art. 17, declares that "the military power shall always be held in exact subordination to the civil authority, and be governed by it." This great principle is repeatedly recognized by our laws, and was respected even amidst the horrours of a rebellion. By a law passed February 20th 1787, the preamble of which states that an unnatural and dangerous rebellion actually existed at that time in this commonwealth, it is declared, that in a free government, where the people have a right to bear arms for the common defence, the military power is held in subordination to the civil authority."

In the 32d section of the militia law of this commonwealth, passed June 22d, 1793, which provides for calling out the militia "in case of threatened or actual invasion, insurrection or other publick danger or emergency," it is enacted that whenever a detachment is made in any such case, "the officers, non-commissioned officers and privates, being able of body, *shall be detailed from the rosters or rolls which shall be kept for that purpose.*" And your committee do not find that the commander in chief of this commonwealth is authorized, in calling out the militia, to select and designate particular officers and parti-

cular corps or men, without regard, "to the rosters or rolls which shall be kept for that purpose."

Wherefore Resolved,

That in the opinion of this house, the said military orders of the first of February instant, issued by His Honour Levi Lincoln, lieutenant governour, and commander in chief of this commonwealth, are irregular, illegal, and inconsistent with the principles of the constitution; tending to the destruction of military discipline, an infringement of the rights and derogatory to the honour of both officers and soldiers; subversive of the militia system, and highly dangerous to the liberties of the people.

All which is respectfully submitted.

ISAAC MALTBY, *Per Order.*

SPEECHES

Of the Gentlemen who composed the Committee, in the Debate, in the House, on accepting the foregoing Report.

Gen. Maltby.

Mr. Speaker,

FEELING, sir, a responsibility as one of the committee who submitted the report now under the consideration of the house, and believing it proper that I should communicate some of the reasons which induced me to unite in that report, I claim your indulgence, while I attempt to perform this duty. And when I consider the importance of the report as it

respects the commonwealth and the commander in chief; when it is known, that I have not been in the habit of detaining the house by my observations in their debates; I may the more confidently hope for a few moments' attention.

I shall not deal in round assertions, unaccompanied with proof. It is my design to examine the constitution and laws of the United States and the constitution and the laws of this commonwealth. This examination may perhaps be thought more properly to belong to those whose profession is the study of law; but, sir, in another capacity, not as a legislator (while studying the duties incumbent on me as a militia officer) I ought at least to know something of the duties of my superiours. While I turn the attention of the house to the constitution and the laws; the report on your honours' table and the documents which accompany it, shewing the manner in which the orders have been issued and executed, will enable them to determine, whether the constitution and the laws of the country and the privileges of its citizens have been duly regarded.

By the United States constitution, art. 2d, sec. 2d, "The president shall be commander in chief of the army and navy of the United States, and of the militia *of the several states*, when called into the *actual service of the United States.*" Here it will be found, that the president has no power over "the militia of the several states" until they are "called into actual service." How then (it will be inquired) are the militia to be called into actual service? The constitution, art. 1st, sect. 8, authorizes Congress to "provide for calling forth the militia to execute the laws of the Union, suppress insurrections and repel invasions." Here, sir, it is evident that Congress have the power to point out the *manner* in which the militia shall be *called into actual service*, and the president has no power to call them into service, in any other way than the one prescribed by Congress. It will be proper then to inquire, what provision Con-

gress have made for this purpose. In the year 1795 Congress passed a law in pursuance of the above recited provision of the constitution; which you will find in the 3d volume United States laws, page 189, sec. 2d, which I beg leave to read: Be it enacted, &c. "That whenever the laws of the United States shall be opposed, or the execution thereof obstructed, in any state, by combinations *too powerful* to be suppressed by the *ordinary course of judicial proceedings*, or by the *powers vested in the marshals* by this act, it shall be lawful for the president of the United States to call forth the militia of such state, or of any other state or states, as may be necessary to suppress such combinations, and to cause the laws to be duly executed; and the use of the militia so to be called forth may be continued, if necessary, until the expiration of thirty days after the commencement of the then next session of Congress. *Provided always*, that whenever it may be necessary in the judgment of the president to use the military force hereby *directed to be called forth*, the president shall forthwith, by proclamation, command such insurgents to disperse and retire peaceably to their respective abodes, within a limited time."

This is the law by which the president is empowered to *call forth the militia*, and by which he is bound *always* to *publish* his *proclamation* before he issues his orders, and never to do *this*, until the combination is too powerful to be suppressed by the civil authority. These are all the powers which Congress have thought proper to give the president, to call forth the militia. The law of 1792, respecting this subject, was repealed by the passage of this act.

But it seems by the general orders issued, Head Quarters, 1st February, by His Honour lieutenant governour Lincoln, that he relies upon the late law of the United States, passed Jan. 9, 1809. Here, sir, with your leave, I will read that part of the lieutenant governour's orders to which I refer, with the 11th section of the law which he has quoted. The lieu-

tenant governour observes, " In pursuance of these constitutional powers, to prevent a repetition of those *rash, indiscreet, unwarrantable and alarming evasions of the laws of the Union*, which have *disgraced* our state (Mass) and been injurious to the respectable citizen and fair trader; it is provided by the eleventh section of an act passed January 9, 1809, that it shall be lawful for the president of the United States, or such other person as he shall have empowered for that purpose, to *employ* such part of the land or naval forces, or *militia* of the United States or the territories thereof, as may be judged necessary, in conformity with the provisions of this and other acts respecting the embargo, for the purpose of preventing the illegal departure of any ship or vessel, or of detaining, taking possession of and keeping in custody any ship or vessel, or of taking into custody and guarding any specie or articles of domestick growth, produce or manufacture; and also for the purpose of preventing and suppressing any armed or riotous assemblage of persons resisting the custom house officers, in the execution of the laws laying an embargo, or otherwise violating and abetting violations of the same.

Now, sir, I contend, that this law *does not provide* for *calling out the militia;* but only provides for the *employment* of them when they *are called out.* Here is no *new method* pointed out by which they may be brought into actual service. The law merely points out the object of their employment. If gentlemen will attend to this act, they must and will be convinced that the president is not authorized to *call out the militia* in any other manner, than that which is prescribed by the law of '95, which requires him first to issue his proclamation, &c. and when *called* into actual service agreeably to the provisions of that law, the president by *this act* is only empowered to *employ* them for the purpose of enforcing the embargo laws.

But admit for a moment that the president of the

United States has a right to call out the militia in a manner different from the provisions of the law of '95. Yet when he calls on the governour as commander in chief of the militia of the commonwealth, the power to *call out* then rests with him, and he (the governour) must either abandon our *state sovereignty*, or he must proceed to make his detachments according to the *laws of the state.*

Let us see then, by an examination of the consitution and laws of this commonwealth, how far *they* have been complied with by the commander in chief.

By the constitution of Massachusetts, he is obliged (chap. 2nd, sect. 1st, art. 7th) "to exercise all the powers incident to the offices of commander in chief, and captain general, agreeably to the rules and regulations of the constitution and the laws of the land, and *not otherwise.*" Therefore if he departs from them, it is a violation of their principles.

By the laws of Massachusetts, passed in the year 1787 (vol. 1, page 306) it is expressly directed, that even in a time of insurrection (for this law was passed during the rebellion in the western counties) orders from the commander in chief should go directly to the major general, or commanding officer of the division, which with leave I will read. Be it enacted, &c. "That whenever an insurrection shall have taken place in either of the counties of the commonwealth, to obstruct the course of justice, or the due execution of the laws, or there is reason to apprehend that a dangerous insurrection for such purposes will be excited, it shall be the duty of the civil officers in such county, as well the sheriff as the justices of the several courts of judicature within such county, immediately to give information thereof to his excellency the governour, for the time being; who is hereby requested thereupon, to exercise the powers vested in him by the *constitution*, and to give immediate direction to the *major general or commanding officer of the division where such insurrection exists, or is apprehended*, and if he shall think it necessary, to the ma-

jor general or commanding officer of any other division or divisions, to *detach* from his or their *division* or *divisions*, such part of the militia for the support of the *civil authority*, as he shall judge fully adequate for that purpose, and for the apprehension and safe keeping of those who may be concerned in such insurrection."

By this law the path is plainly marked; and the order from the governour is to be made to the next in command. But if it were possible that it should be made more plain, look at the militia law, passed in 1793, 32d sect. where it is enacted, "That whenever in case of threatened or actual invasion, insurrection or other *publick danger or emergency*, the militia or any part thereof shall be ordered out or *detached*," in all cases when the detachment is made, "the officers, non-commissioned officers and privates, being able of body, shall be *detached from the rosters* or rolls which shall be kept for that purpose." Therefore it is evident from the laws of Massachusetts, that orders for detachments must pass from the commander in chief to the major general, or next in command, and that inferiour officers, in different grades, are not to receive their orders directly from the commander in chief, but each is to look to his next superiour officer for his orders.

What, sir, would be the consequence, if these proceedings, so *unprecedented*, should pass unnoticed? The principle adopted is ruinous!—No military man can avoid seeing, that it goes to the destruction of every military principle. It divests the officers of their constitutional powers, and deprives them of their rights! When an officer receives a commission, it gives him certain powers and rights, of which he cannot regularly be deprived without trial. All the officers, a part of whose men are taken from their command without their knowledge or consent, are deprived of the right to exercise all the power given them by their commissions; and in the examination of these proceedings of the Lieutenant Governour, I

find one Brigadier General has but six companies left under his command; the remaining companies being detached, without his orders, knowledge, or consent, and subject *to the call* and *discretion* of the Collector. Upon the same principle by which the commander in chief is permitted to take a part, he may take all his men, and deprive him of his entire command. If the principle be admitted that he may designate officers, he may also select soldiers, and where there are ten, one favourite may be secretly armed for the destruction of the remaining nine.

It was not my design (when I rose) to point out the evil consequences of such irregular measures, nor my wish to occupy the whole ground. But before I sit down, I will state one fact, which perhaps may have a considerable effect in the decision of the question before the house. Governour Trumbull, of Connecticut, received orders from the Secretary of War, similar to those received by Lieutenant Governour Lincoln, and after advising with the best counsellors, he replied to the Secretary, that he would never have an agency in the execution of laws so unconstitutional and so destructive to the rights of the people. And it is to be exceedingly regretted by every citizen of Massachusetts, that this noble example had not been imitated by our commander in chief; who thus would have exhibited to the world a due regard to the *rights of the people and the* SOVEREIGNTY *of the* STATE.

MR. SARGENT.

Mr. Sargent observed that there was a time when certain gentlemen exerted all their talents and all their eloquence in favour of the constitution and the laws—the liberties of the people and the rights of man—The people were every thing—their rulers were nothing—or rather they were the servants or slaves of the people—no character was too elevated to be assailed, no reputation too fair to be attacked; no services a security against reproach. Jay, who made

a treaty, from which this country derived great benefit, was reviled, abused and burnt in effigy. Hamilton was persecuted, calumniated, and finally murdered; and even Washington himself escaped not the foul and bitter tongue of slander. But, sir, times are changed, and men have changed with them—To hear gentlemen talk now, one would think that the people had no rights, and that the constituted authorities were absolute—the maxim of the present day, is "The King can do no wrong."

It is no pleasure to me, sir, to animadvert upon the measures or conduct of men high in office; but when called upon to perform a duty, I hope to execute it without fear or favour.

Having had the honour to be one of the committee who made the report now before us, I will with your permission, sir, give some account of the manner in which the committee proceeded. Having ascertained the facts which are stated in the report, and which no gentleman has called in question, their first inquiry naturally was, had the President of the United States a right to give to the commander in chief of this Commonwealth the directions which by the orders of the Lieutenant Governour it appears he did give to him?

By the constitution of the United States, Congress is authorized "to provide for the calling forth the militia to execute the laws of the Union, suppress insurrections, and repel invasions; "and the President is the commander in chief of the army and navy of the United States, and of the militia of the several states, *when called into the actual service of the United States.*" There is no militia of the United States.—The militia belong to the several states; and when they are to be brought into the service of the general government, they must be called forth according to the laws of the states respectively.

Pursuant to the powers vested in them by the constitution, Congress passed a law in 1792, providing for calling forth the militia, &c. and in the year 1794,

when there was an insurrection in the western parts of Pennsylvania, the militia of several states were called forth according to that law. By recurring to the history of those days, we shall see what was then the practical construction of the law, how scrupulously President Washington conformed to it, and with what exemplary discretion he conducted at that important and delicate crisis.

The insurgents had finally perpetrated acts which amounted to treason, being overt acts of levying war against the United States. The facts were certified by an associate justice, according to the law in force —and President Washington issued his Proclamation, calling upon these deluded people to disperse and retire peaceably to their several homes, within a limited and reasonable time. The governour of Pennsylvania issued a proclamation, dated *on the same day* with and recognizing the President's. At the request of the President, *measures were taken* by the states of Virginia, Maryland, Pennsylvania and New Jersey, for calling forth part of their militia. The President issued *another proclamation*, and the troops were finally embodied. The governours of Virginia, Pennsylvania and New Jersey led on their respective troops, and Washington himself accompanied the army till his presidential duty required his return to Philadelphia. On parting with the army, he sent a message to Governour Lee, the commander in chief, in which he particularly recommended, "that every officer and soldier would constantly bear in mind, that he came to support the laws," &c.—"*That the essential principles of the government, confine the province of the military, when called forth on such occasions*, to these two objects— 1st. To combat and subdue *all who may be found in arms*, in opposition to the national will and authority. 2d. To aid and support *the civil magistrates*, in bringing offenders to justice." He thus concludes— "The dispensation of this justice belongs to the *civil magistrate—and let it be your pride and glory to have the sacred deposit there inviolate.*"

I will now, sir, revert to the report, and as the hour is late and the house impatient, will comment only on some parts of it, which as I run it over, may strike me as important. The officers who have been designated and appointed by His Honour, are ordered to "make correct muster and pay rolls of such militia as shall be employed *in actual service*, and transmit the same to the war department of the United States." They are therefore to be considered as troops of the United States—are they to be under the law martial, sir? may they be dealt with according to the rules and discipline of war? Are gentlemen aware of all the consequences which may flow from this measure?

The number of men under the seven captains who have been designated and appointed, could not be ascertained, because the returns of companies never appear in the adjutant general's office. This circumstance of itself, sir, manifests the irregularity and impropriety of this mode of proceeding. Neither the commander in chief nor the adjutant general can tell how many men they have ordered out—in fact they don't know that the officers who have been designated, are in existence. Some of them may have been arrested by order of their superiour officers to be tried by a court martial. These and many other difficulties are avoided by the usual manner of issuing military orders.

By the orders of Col. Badger, 2346 of the militia of the town of Boston, in addition to other troops, may be put under the command of the collector of this district, be he whom he may; subject to his discretion, to aid him to discharge his duties, *prevent disorders and opposition to the authority of government.* If the collector should be of opinion that this house was acting in opposition to the authority of government, why might he not order his troops hither to disperse or punish us? Part of the officers and men of Col. Badger's infantry, who are now ordered to hold themselves in readiness at the call of the collec-

tor, were lately detached as part of this state's quota of the 100,000 men drafted for the service of the United States, and have been put under the command of another colonel belonging to Roxbury. This is another proof of the irregularity of the procedure. Indeed, sir, these men are now under *three distinct commands!* They may be ordered by the collector to march one way—by brigadier general Winslow another—and they may receive different orders from colonel Barnes.

The gentleman from Hopkinton says that he thinks the commander in chief has done pertectly right, and in his opinion there would have been no more propriety in his having transmitted the orders in the usual mode, through the hands of the superiour officers, than there would have been in general Washington's having sent orders to pass through the hands of the former commander at West Point after he had been informed of his treachery. Does the gentleman mean to say that all the major generals of this commonwealth are *Arnolds*, except general Brickett of Haverhill? I have had the pleasure to hear that general Brickett has sent in his resignation.

The gentleman from Dorchester says that by the constitution of the United States, all laws passed by Congress are binding, any state law to the contrary notwithstanding—and adds, that the militia are under the immediate command of the president, and he may call out or empower any individual to select any portion of them. I did not think, sir, that any gentleman in this house would rise in his place and advance a doctrine like this. I have no belief that the president has any command whatever over any part of the militia till they are legally and regularly called forth for the service of the United States. If it were as the gentleman says it is, what government could possibly be more arbitrary?

[*Mr. Morton rose to explain—he was sorry the gentleman should misrepresent him—he had not said that*

the president might send his orders to any individual, &c.]

I did not misrepresent the gentleman, said Mr. Sargent, and I am sorry that he should pretend I did—he certainly said so; and in confirmation of it, he added, that the lieutenant governour did not issue these orders as commander in chief, but as a *private man*, in whom the president had seen fit to place confidence, &c. Yet His Honour says in the orders, he had been requested, as commanding officer of the militia of this commonwealth, to appoint these officers—and the orders are dated at Head Quarters, and countersigned in the usual manner by the adjutant general—"by order of the commander in chief."

The argument of the gentleman went to prove that your militia laws are good for nothing.—Repeal them, sir, and where is your militia!

We say, sir, that these orders are irregular—military men will immediately pronounce them so. The committee inquired of the adjutant general if he had ever issued orders *in this way* before. He believed he had, to the Independent Cadets, in the absence of the major general. Col. Apthorp remembers no such instance, nor do other officers of whom we inquired. But if that was ever the case, it must be remembered that this corps does not belong to the line. The procedure is, therefore, virtually acknowledged to be without a precedent.

That the orders are illegal and inconsistent with the principles of the constitution, is shown in the report. They undoubtedly tend to the destruction of military discipline, and are an infringement of the rights and derogatory to the honour of both officers and soldiers. You would in this way make an officer a ridiculous cypher—you don't remove him from office, but you take the men from his command; while you would impose unequal burthens upon some part of the militia, you might deprive another part of their just share of honourable service. They

are subversive of the militia system. What would become of your divisions, brigades, regiments, battalions, and what would be the case of your brigade majors, and adjutants, your rosters and your rolls—if all the forms, regularity and order which belong to that system are to be despised and trampled upon?

Finally, sir, the orders are said to be *dangerous to the liberties of the people.* If the principle contended for is correct to day, it must be correct to morrow. If one president can give such instructions, so can another. And if they are to be obeyed, then any portion of the militia may at any time be selected and placed under the controul of any individual, subject to his discretion, to aid him in preventing what he may deem an opposition to the authority of government, &c. Let gentlemen of all parties duly weigh this subject, and then say if any thing can be more absolute or dangerous. If this principle is correct, sir, what necessity is there for drafting men, or raising volunteers? You have already a standing army, composed of the whole militia of the country.

Col. Thatcher.

Mr. Speaker,

As the house has voted not to adjourn, and there appears to be a disposition to take the question this evening, I shall confine myself to a course more limited than I intended. When gentlemen reflect upon the usages of other legislative bodies, when they recollect that the House of Representatives of the United States can be kept together all night to pass an additional embargo act, I hope they will discover no impatience on this occasion—and that they will allow us time to bring the whole subject before the house. But when, sir, I find no military man attempting to defend the late unprecedented orders—when I see gentlemen of talents in the minority searching in vain for law or usage to justify this procedure—it is rather because other gentlemen of the

committee, though they have defended the report with great correctness and perspicuity, have professed not to embrace the whole subject, than from any necessity of the case, that I address the house on this occasion. But, sir, we will endeavour to take a view of the objections raised to the report, and to examine such parts of the constitution and laws of the United States and of this commonwealth as seem most applicable to this subject.

And first, sir, it may be observed that gentlemen have bottomed their defence of the executive upon the position that the president, being the commander in chief of the militia of the United States, had, as such, a right to issue his orders to any officer of the militia. This, sir, is a gross errour in the outset. There is no such thing as *militia of the United States.* The constitution speaks of "*the militia,*" and of "*such parts of them as may be employed in the service of the United States.*" As in art. 1st, sect. 8th, "The Congress shall have power to provide for calling forth *the militia*, to execute the laws of the Union, and suppress insurrections and repel invasions, to provide for organizing, arming and disciplining *the militia*, and for governing *such part of them as may be employed in the service of the United States*, reserving to the states respectively the appointment of the officers, and the authority of training the militia, &c." (I quote this whole passage because I shall have occasion to refer to it again) and the constitution also speaks of "*the militia of the several states,*" as in art. 2d, sect. 2d, "The president shall be commander in chief of the army and navy of the United States, and *of the militia of the several states when called into the actual service of the United States.*" Until the militia of the several states are called into the actual service of the United States, in a mode provided by Congress, which can be done only in certain cases, the president has no command over the militia. As my friend from Boston (Mr. Sargent) has said, until this is done, there is no more privity between the president and

an inferiour officer of Massachusetts, than there is between that gentleman and the dey of Algiers.

It will be admitted that the federal constitution was a compact between independent states, possessing the rights of sovereignty, jealous of their state powers, unwilling to yield more to the general government than was absolutely necessary for the purposes of the Union. There was no point of which the states were more tenacious than the right of bearing arms, and the appointment of the officers of their own militia; and we may add, no rights more strongly secured to the states by the constitution. So jealous were the states of this power to controul the militia, that they would not invest the president of the United States with authority to call forth the militia even in cases of the greatest emergency. We find by the section of the constitution already quoted, that Congress alone has the power to provide for calling out the militia of the several states, and only in certain cases. Gentlemen contend that Congress has so exercised this power as to authorize the president, and his substitutes, to call out the militia for certain purposes contemplated in the last act respecting what they have been pleased to call an embargo. The gentleman from Dorchester (Mr. Morton) has read a part of the sixth article of the constitution, viz. The "constitution and the laws of the United States which shall be made in pursuance thereof, shall be the supreme law of the land." I will thank the gentleman to take with him also the twelfth article of the amendments to the constitution.

"The powers not delegated to the United States by the constitution, nor prohibited by it to the states, are reserved to the states respectively, or to the people." All laws therefore which can constitutionally be made by the general government, must be founded on powers clearly vested in that government by the constitution.

This then being admitted, Mr. Speaker, and also that Congress alone has power "to provide for call-

ing forth the militia to execute the laws of the Union, "to suppress insurrections and repel invasions," let us inquire in what manner Congress has exercised this power—whether any of the cases in which the militia may be called forth, exist in Massachusetts, and if so, whether the requisitions of the law for calling out the militia have been complied with. With respect to the first point, we find that by a law of the United States, passed Feb. 28, 1795, entitled "An Act to provide for calling forth the militia to execute the laws of the Union, suppress insurrections, and repel invasions," "whenever the laws of the United States shall be opposed, or the execution thereof obstructed in any state by *combinations too powerful to be suppressed by the ordinary course of judicial proceedings, or by the powers vested in the marshals, by this act*, it shall be lawful for the president of the United States to call forth the militia of such state, or of any other state or states, as may be necessary to suppress such combinations, and to cause the laws to be duly executed, and the use of the militia so to be called forth, may be continued, if necessary, until the expiration of thirty days after the commencement of the then next session of Congress."

Sect. 3d, "Provided always," that whenever it may be necessary, in the judgment of the president, to use the military force hereby directed to be called forth, the president shall forthwith, "by proclamation, command such insurgents to disperse, and retire peaceably to their respective abodes, within a limited time.

In the 4th sect. we find that "no officer, non-commissioned officer or private of the militia, shall be compelled to serve more than three months, after his arrival at the place of rendezvous, in any one year, nor more than in due rotation with every other able bodied man of the same rank in the battalion to which he belongs."

The 9th sect. of this law ordains that the marshals of the several districts, and their deputies, shall have

the same powers in executing the laws of the United States, as sheriffs and their deputies in the several states, have by law, in executing the laws of the respective states."

This law repeals a former one upon the same subject, but the law which I have now cited is the only one now in force, in which Congress has exercised this power agreeably to the provisions of the constitution.

Do any of the cases in which the militia may by this law be called forth exist in this state? Have the laws of the United States been opposed, or the execution thereof obstructed by combinations too powerful to be suppressed by the ordinary course of judicial proceedings? It will not be pretended that the least obstruction or impediment has been opposed to the courts of the United States or to their ordinary course of judicial proceedings in this commonwealth. Have the marshals or their deputies been resisted? Have there been combinations to oppose the government too powerful to be suppressed by the marshals, armed with the whole power of the sheriffs with the posse comitatus at their heels? No such thing is pretended. The gentleman from Worcester, (Mr. Bangs) indeed tells us that a man was taken from a vessel some time since by a few individuals in disguise, but he also informs us that he was almost immediately released; surely he will not say that this case was one contemplated by this law. Is it necessary "in the judgment of the president" "to use the military force directed by said law to be called forth" in certain cases? Has he discovered any insurgents in Massachusetts? And has he, as he did in regard to certain people in Vermont, issued his proclamation to the poor deluded rebels of Massachusetts, ordering them to disperse, and go to their places of abode! "You all do know" that there has been no such thing. The gentleman from Boston has stated with what caution—with what moderation—with what delicacy—the militia was called

forth by the illustrious Washington, at a time when a most alarming rebellion existed in Pennsylvania. The steps pointed out by a law then in force, similar to the one before recited, were strictly pursued. There was no attempt then made by the president to *select and designate* particular subordinate officers to enforce the laws. An order, or rather a request, was made to the commanders in chief of several states to call forth a certain number of militia, and the command was given to one of the governours, even after the militia was in the field. The whole business was conducted with a scrupulous regard to the constitution and the laws and to military usage.

But, sir, gentlemen, conscious that the late orders cannot be justified under the laws previously passed, have called to their aid the 11th section of the last embargo law. Let us inquire whether this 11th section be constitutional, and if so, whether it has repealed the former law for calling forth the militia in certain cases, or enacted any new mode for exercising this power. Here, sir, I wish to be understood not to intrench myself behind the opinion expressed by this legislature with respect to the unconstitutionality of this law. I am desirous to examine it without reference to this opinion. The substantial part of this section is, that "It shall be lawful for the president of the United States, or such other person as he shall have empowered for that purpose, to employ such part of the land and naval forces, or militia of the United States or the territories thereof, as may be judged necessary in conformity with the provisions of this and other acts, respecting the embargo, for the purpose of preventing the illegal departure of any ship or vessel, or of detaining, taking possession of and keeping in custody and guarding any specie or articles of domestick growth, produce or manufacture; and also for the purpose of preventing and suppressing any armed or riotous assemblage of persons resisting the custom house officers in the execution of the laws laying an embargo:

or otherwise violating or assisting and abetting violations of the same." With respect to the constitutionality of this section, it is to be observed that in order to make way for the power intended to be given, the militia are in this section called *the militia of the United States*, because as I have already stated, the president has no power over the militia of the several states until they have been called forth by law in certain cases. But "it shall be lawful for the president, or such other person as he shall have empowered for that purpose, to employ the militia," &c. Thus then, sir, it appears that Congress has attempted not only to invest their favourite president with all the powers of generalissimo of the land forces," &c. lord high admiral of the seas; but he is to "employ" the whole militia, if he thinks proper, for the purpose of enforcing the embargo laws, without the least notice or formality. But this is not all. The president is not to exercise these tremendous powers himself solely, but he is authorised to "empower" any person with like authority—so that if this be constitutional, the president can invest any person, citizen or foreigner, officer or soldier, with powers superiour not only to all our officers, but which "puts at nought" all our state governments and all our laws. We have heard of a people who have invested their chief magistrate with high powers during life, with power also to name his successour; but I believe it was reserved for this Congress to authorize an individual not only to exercise supreme power himself, but to invest him with power "of substituting one or more agents under him" who should be clothed with the same plenary powers. To shew this is not a construction merely imaginary, if you will turn to His Honour's orders you will find that he has actually accepted this power of attorney, and that he has gone even beyond the president's power, which extends only to employing the militia "efficaciously to maintain the authority of the laws respecting the embargo." For His Honour has issued his orders

to these officers "to be prepared and hold themselves in readiness with those under their command, completely armed and equipped, at the call of the collector, and *subject to his discretion*, to aid him with their whole force, or such part thereof as may be sufficient, to enable him within his district, to discharge his duties, *prevent disorders and opposition to the authority of government*, and carry the aforesaid laws into execution. Thus, sir, you perceive that we have already fifteen or sixteen thousand soldiers in this state, with officers who have been *selected* for their "known respect for the" embargo "laws" and at the call, and subject to the discretion, of the collectors—among other things to "prevent disorders and opposition to the authority of government." If the collector, or in his absence the deputy collector, should imagine that this legislature had manifested "an opposition to the authority of government," I see nothing to prevent him, under his power of attorney, from putting himself at the head of the whole militia of Boston, and ordering his columns to march to this House, and *compelling* the Legislature to disperse. If, sir, Congress have power to make such a law as this, what shall prevent them from exercising the most unlimited and arbitrary powers? If Congress can invest the president and his substitutes with these powers, there is no longer any constitution—your liberties are a name—your forms of legislation a mockery. Instead of free republicks united by solemn compact, under a federal government with limited powers, we have become a consolidated empire under the absolute controul of a few men—we have sunk into the deep abyss of a frightful despotism. Sir, are gentlemen willing to maintain principles which inevitably lead to these consequences? Are the boasting "republicans" of Massachusetts ready to sacrifice the state governments upon the altar of party? Are they ready to abandon the favourite maxims of Hancock and Adams, and to prostrate all our rights—all our institutions, to carry into effect this mad system of destruction?

But, sir, enough has now been said respecting the unconstitutionality of this section; let us inquire whether it has repealed the former law for calling forth the militia in certain cases, or enacted any new mode of exercising this power. It is a given principle that a law touching the same subject as any former law, but neither respecting nor noticing it, the last does not repeal the former law, except so far as the two laws may be contradictory or inconsistent with each other.

In the case under consideration, this law not only does not contradict or repeal the law respecting the manner of calling forth the militia in certain cases, but it does not prescribe *any* mode of calling them forth. Gentlemen have been obliged to dwell upon this word "employ," and they would make this single magical word contain within itself a virtual repeal of the law for calling forth the militia before cited, and also a new law for this purpose—to such a subterfuge are gentlemen driven in an attempt to justify what cannot be defended. Sir, the gentleman from Hatfield, General Maltby, has very justly said, that neither the president nor the lieutenant governour can constitutionally "employ" the militia until they are called forth agreeably to the provisions of the law for that purpose. If gentlemen say this is reductio ad absurdum, it makes the laws a mere nullity—we answer that we are bound to give their full effect to the constitution and the laws, and to weigh them in the scales of common sense and sound construction. But if the Congress of the United States, either from want of discrimination, or from their extreme haste to rivet the chains upon the necks of the people, have omitted a link in one of their chains; it is not for us to supply the deficiency.

I think then, Mr. Speaker, we have made out our case so far. We have shown that Congress had no right to invest the president or his substitutes with these powers. Consequently that he exceeded his constitutional authority in attempting to carry them

into effect. It follows of course that His Honour the lieutenant governour cannot be justified in acting under this void authority. But even if this difficulty did not exist, we consider the mode in which the orders have been issued and executed, as highly irregular, as deviating from the provisions of our state constitution and laws, and in short deserving all the expressions of disapprobation contained in this resolution. It is indeed extremely to be regretted that His Honour had not, like the patriotick governour of Connecticut, refused to have any participation in carrying into effect this most oppressive and unconstitutional law—that he condescended above all to select and appoint these officers, and to order out these men in a manner unknown to our laws, and to military usage, and to give offence to the whole body of the militia. Sir, I conceive this has been a greater offence to those selected than to those omitted. It clearly implies that they were considered as fit instruments to be employed, under the command of *a new species of military officers, the collectors, to be subject to their discretion*, and to do what the great body of the militia could not be expected to perform. Sir, let me not be understood to convey any censure upon these officers or men.—I know but one of them personally. I do not believe that they will generally conceive themselves honoured by the choice, or that they will attempt to execute the orders. One of these officers, the only major general appointed for this business, has already resigned his commission, although he had less cause of complaint as to the mode of transmitting the orders. I presume the officers selected would sooner follow the example of Gen. Brickett, than put themselves under the controul of the collector, or have any ageney in enforcing this law.

But in order to ascertain whether the resolution offered by the committee can be supported, let us inquire what are the military powers vested in the commander in chief of this commonwealth in relation

to this subject—and how these powers are to be exercised. We find by the constitution of Massachusetts, chap. 2d, sect. 7th, that the governour of this commonwealth for the time being, is intrusted with a variety of powers "incident to the office of captain general and commander in chief, *to be exercised agreeably to the rules and regulations of the constitution, and the laws of the land, and not otherwise.*" Those gentlemen who seem disposed to justify the measures under consideration, by this clause of the constitution, will, I think, relinquish that mode of justification, when they consider the last part of this clause—for, sir, this is not a military government, in which the powers incident to the office of commander in chief are undefined, or of doubtful construction.—No officer in this commonwealth, however elevated his station, is above the constitution and the laws. What then are "the laws of the land" relative to this subject? Here it might be said that there is a military as well as a civil common law, consisting of principles and precedents established by immemorial usage. I could state a great variety of cases, such for example as many principles which are universally adopted by courts martial, which are known in no statute, but depend on the military common law. I should say that common law, and common sense, would dictate, that when the commander in chief issues an order for making a detachment of the militia comprehending officers of various grades and in various parts of the commonwealth, men from a great number of divisions, brigades and regiments, these orders must pass in the regular course through the different grades of officers, till at last they reach the privates. If you adopt any other course, you throw the whole system into confusion, or rather you have no longer any system; and you had better have a levy "en masse" in some particular section of the country of as many men as are wanted for the purpose. But, sir, we are not compelled in this instance to rely on the common law—we have an express statute law,

exactly applicable to this case. I shall not here cite a number of passages in our laws which might be introduced, because the 32d section of the "act for regulating and governing the militia of the commonwealth of Massachusetts" &c. passed June 22d, 1793, is perfectly in point. This section enacts, that "whenever, in case of threatened or actual invasion, insurrection, or other publick danger or emergency, the militia, or any part thereof, shall be ordered out or detached, &c. the officers, non-commissioned officers and privates, being able of body, shall be detailed from the rosters or rolls which shall be kept for that purpose." And in the same section we find it enacted, that "any officer having a commission in the militia, who shall neglect or refuse to execute any orders he may receive from his superiour officer, to make a detachment of the corps under his command, it shall be the duty of the officer who issued such orders immediately to arrest such delinquent officer, bring him to trial therefor, before a court martial, and forthwith give information thereof to the commander in chief; and the officer who issued the order which shall not have been executed as aforesaid, shall, immediately after arresting the delinquent officer, proceed, by himself or some other officer under his command, to make and complete the detachment ordered as aforesaid." Here, then, is a certain, definite mode, clearly pointed out for making a detachment of the militia, in case of invasion, "insurrection, or other publick danger or emergency." Gentlemen will not deny that these words embrace the present case, as the president, the lieutenant governour and they themselves have stated it. Here we have a law as clear and explicit as language can make it, pointing to the course which His Honour ought to have pursued. "The officers, non-commissioned officers and privates, being able of body," ought to have been "*detached from the rosters or rolls kept for that purpose.*" This is the only course consistent with order and equality. It follows that the orders

for making a detachment from a variety of divisions, brigades, &c. must pass through the regular grades of officers—for how can you make a detachment from the rolls and rosters, unless you consult those who have these rolls and rosters? How, for example, can you detach one hundred men from any regiment without consulting the colonel and the captains of that regiment? Suppose the adjutant general should attempt to do it—you will find that he has no returns of companies. If gentlemen say, He should take one or more companies—the answer is, this is not a detachment "from the rolls or rosters kept for that purpose," but a levy "en masse." But pursue this subject one step farther. I have quoted the law which enacts "that no officer, non-commissioned officer or private of the militia, shall be compelled to serve more than three months after his arrival at the place of rendezvous in any one year, nor more than in due rotation with every other able bodied man of the same rank in the battalion to which he belongs." How in the name of common sense will you make your second detachment, even if you could complete the first?

Sir, I need not enlarge—military men will see at a glance, and every gentleman must discover, that you would soon have "confusion worse confounded." It would have been enough for us to have shewn what the law is. But as the gentleman from Worcester (Mr. Bangs) has attempted to be witty on this subject, and to ridicule all this military system, which he is pleased to term parade, I thought proper to give him some new ideas upon the subject. I will just remark, sir, before I dismiss this law, that the latter part of this section which provides that in case any commissioned officer shall neglect, &c. to execute the detachment, &c. that the officer shall be arrested and tried, and information shall be given of such arrest to the commander in chief; and the remainder of the clause quoted, proves that officers in the intermediate grades between the commander in chief

and the officer of the lowest grade concerned in making the detachment are to be consulted. Sir, the gentleman from Boston has stated the endless confusion which would ensue among officers by any other course, and I shall not trouble the House with other illustrations which might be made of this point. I defy the gentleman to produce an instance, except the present, in which a detachment has been made or attempted to be made in any other mode than that contemplated by law. The United States have lately made two detachments of militia of 100,000 each. How were these made? In the established mode. The rank and the rights of officers and men were respected, and the detachments were made with despatch and regularity. But it was left for this last embargo law, in breaking down the barriers of the constitution and the laws, to prostrate the militia system in the general wreck. It was left for those who attempted to execute this law, to adopt the plan of *selecting and designating* officers of the militia who could best be confided in.

Mr. Speaker, I have yet to notice one mode of getting rid of any responsibility for these measures, which indicates a fertility of imagination and a boldness of design for which I give gentlemen all due credit. Sir, they boldly cut the knot which they cannot untie, and they tell you that the lieutenant governour did not, in this instance, act as commander in chief of this commonwealth. If gentlemen had examined the order of the lieutenant governour, of the first of February, they would not have hazarded this assertion. If they will look at the third paragraph of the order they will find these words—"Thus authorized and called on to execute the laws of the Union, and to cause its authority to be respected, the president has directed the secretary of war to request me, *as commanding officer of the militia of this commonwealth*, to appoint some officer of the militia of known respect for the laws," &c. This order is dated *Head Quarters*, Boston, Feb. 1, 1809, signed

by His Honour, and countersigned by William Donnison, adjutant general. After reading these passages from the order, I can only say that His Honour has fallen into the hands of *most unmerciful friends*. It would have been more kind as well as more prudent to have attempted no justification at all, than one which involves such palpable absurdity. As to the principle, upon which this ingenious kind of defence is founded, that the president may direct his orders to *any body*, and that *any body* is obliged to order out the conscripts, I have already, perhaps, said enough. I will only add, that it is the French system of police. The president has only to address his mandate to the minister of the interiour, and if you have not a complete system of espionage, you may thank the spirit of your people—or the timidity and forbearance of the government.—But the danger is past with the exposure of these measures, and we ought to thank an overruling Providence, which has prevented the horrours of bloodshed and a civil war.

Sir, I must add a few remarks upon the facts furnished by the schedule of the adjutant general—because it has been said that the mode of designating these officers has been very proper and unexceptionable. It appears that this has been "the unkindest stab of all." You will perceive that in selecting these officers, other considerations than the apportionment of troops to the size and importance of the places to be guarded, seem to have governed the commander in chief. For example, we find the comparatively inconsiderable port of Barnstable guarded by a brigadier general with two thousand four hundred and seventy-four infantry, rank and file; while the populous and important port of Salem is left to the command of a captain. In the town of Wiscasset, we find a brigadier general, a colonel and two majors in commission; a captain is selected to command at this port.

Thus, sir, having gone through what belongs to the argument, and having, as I conceive, established

the premises, the conclusions, as expressed in the resolutions, follow of course—I need not repeat them. The responsibility must rest with the commander in chief. He is amenable to the people, and to this their legislature, for an abuse of power.

But, sir, we have not proposed an impeachment; although it was his duty to have been better informed upon this subject, even as a lawyer. Though his deviation from all law and all military usage has been "gross, open, palpable," yet candour would dictate that His Honour, having never been a military officer, may not have seen the extent and tendency of these measures. Although we were bound by oath to support the constitution; although we were compelled by duty to vindicate the honour of our violated laws, and to assert the rights of our insulted sovereignty, we are not obliged to pursue crimination after the danger of deviation, by being developed, has ceased to exist.

Mr. speaker, I ought to apologize for the tedious course of investigation into which I have been almost necessarily led, and to thank the house for their patient attention. I shall close with a few words, which are extorted by the remarks of the gentleman from Dorchester. He considers the spirit which animates the federalists of this day as totally different from that of the whigs of '76. It is hardly necessary to repeat what was said within these walls, within a few days, and I regret that the gentleman introduced the subject. But, sir, we must be permitted to say, that if the spirit of '76 was that of opposition to tyranny, so is that of the present moment. If that was a spirit of defiance to foreign tyranny, this is a spirit of opposition to domestick usurpation. If there be any difference, it is not in kind, but in degree. If our fathers rose at little more than the theory of unjust taxation, we have borne the accumulated evils of a long suspended, I had almost said annihilated, commerce. They disdained to pay an inconsiderable tax on stamps and tea, because they de-

tested the principle of the demands. We have borne the incalculable losses of a fourteen months embargo, because we have fondly hoped for relief—because the oppression has come from among ourselves, and we shudder at the horrours of civil war. The wound has been inflicted by men who obtained the confidence of the people and then betrayed it. No, sir, the spirit of our fathers disdained to submit to oppression. But they did not rush madly to the conflict. They petitioned—they remonstrated—they implored. Let us then invoke their spirit to inspire our councils. Let us fan the pure flame of patriotism till it inspire us as a people. Let the freemen of the north, "in conscious virtue bold," regardless of insidious whispers of division and empty threats of exasperated power, pursue the cool, decided and dignified course which they have commenced—the government shall be regenerated—the country is saved.

MEMORIAL.

To the Honourable the Senate and House of Representatives of the United States.

THE MEMORIAL AND REMONSTRANCE OF THE LEGISLATURE OF MASSACHUSETTS.

WHEN the government of a free people is felt to be oppressive on the community; when its measures appear to originate in imperfect conceptions of the interests of the whole, or inattention to the important concerns of any considerable portion; a decent respect for the opinion of their fellow citizens, and a

just sense of their own rights, require of that part of the society which feels oppressed or alarmed, a prompt and explicit declaration of their opinions. Such a course of proceeding, by producing early and frequent publick discussions, is calculated to support all such measures as are wise and expedient; and on the other hand, it furnishes a seasonable opportunity to the government to abandon all such as are found to be impracticable or injurious; it is calculated at once to silence the murmurs of the people if they are unfounded, and to remove all their just causes of complaint.

The citizens of Massachusetts are firm and zealous in the vindication of their rights; but their habits and their principles equally forbid a resort to violent, disorderly or unconstitutional means for that purpose. They indulge a pride in the belief that the constitutions of government under which they live, are so framed as to afford a peaceable remedy for every grievance to which they may be subjected. They have accordingly, by petitions from various parts of this state, expressed to the president of the United States their sentiments on the oppressive operation and destructive tendency of the embargo laid on their ships and vessels in December, 1807. This legislature also, in the same spirit, have heretofore endeavoured, through their senators and representatives, to communicate to the government of the United States their opinions and views of the system of policy lately adopted and pursued by the administration. They have seen with regret that these peaceable and respectful efforts have not produced any relaxation of the rigorous measures complained of; but that, on the contrary, it has been thought proper to enforce the embargo by a late act, exceeding in severity all that preceded it; an act which, if continued in operation, will, as we apprehend, not only complete the destruction of the commercial prosperity, but prove highly dangerous to the publick liberty and domestick peace of this people. This le-

gislature have also felt the most serious alarm from perceiving the other measures lately proposed and contemplated in the Congress of the United States. At this awful and momentous crisis we ought not to affect ignorance of those events, which on ordinary occasions a sense of decorum might forbid our noticing. It would be a base dereliction of duty, if at such a moment as the present, we should permit a too scrupulous regard to mere forms to prevent our attempting every thing possible for the security of our constituents, and for the peace and happiness of our common country. This legislature therefore, with the plainness and sincerity which becomes the representatives of a free people, and with all the respect which is due to the honourable body which they address, do present this, their solemn remonstrance, against the course of measures which is now oppressing this part of the United States.

Commerce has been one of the chief employments of the people of New England from the first settlement of the country; and its success has promoted and abundantly rewarded the labours of agriculture. This latter, in its turn, has extended and encouraged commerce; and from the joint operation of these causes, New England, without any great staple, and without any peculiar local advantages, has constantly and rapidly increased in wealth, prosperity and power. If, however, the advantages of commerce were less obvious and less important, yet the habits of the country, so long and firmly established, could not be suddenly changed, without producing consequences the most distressing and destructive. Our husbandmen and mariners cannot by an act of government be converted into manufacturers; nor will our merchants and mechanicks ever consent to abandon their cities, and retire from the sea shore, to clear up and cultivate the wilderness. The history of the world has demonstrated that even the most despotick governments have hardly ever succeeded in changing the habits of a great people;

and most certainly in a free country it cannot be attempted with any prospect of success. The measures adopted by the British government, to interdict or controul our commerce, were among the most powerful causes of the revolution. The power of establishing commerce, is enumerated, in the declaration of our independence, among the essential rights of sovereignty; and in the articles of confederation, trade, religion, and the sovereignty of the states, are mentioned as the three principal objects which that compact was intended to protect. In the present constitution of the United States, while the government are intrusted with a greater and more adequate power for the protection and extension of commerce, the caution and jealousy of the people have imposed various restrictions on that power. The government are prohibited from imposing any tax or duty whatsoever on exports, lest in virtue of that authority they might in any degree embarrass the exportation of our produce. The people have manifested a similar disposition in other articles of the constitution; and if at the time of framing and adopting that instrument, any question had arisen as to the extent of the power or the duty of the government in this particular; there can be no doubt that a clause would have been inserted, most explicitly declaring the interests of commerce to be one of the principal inducements for forming the Union, and its encouragement and defence to be one of the first duties of the government; while the right to annihilate or obstruct it would have been explicitly denied. For a long time after the establishment of this government, the fisheries, navigation and trade of the country were protected and widely extended. They furnished almost the whole revenue of the United States, and encouraged universal industry. When in the year 1794, the commercial rights of the nation were assailed by Great Britain, the immortal Washington, by dignified, fair and impartial negotiation procured for his country ample compensation

for past injuries, and security against further aggressions. In the year 1798, our government, under similar circumstances, attempted, in the same manner, to obtain from France indemnity for outrages, and a recognition of our rights; and when fair negotiation was found to be fruitless, they did not hesitate immediately to adopt measures of defence, becoming an independent and powerful people. The success of these wise and patriotick measures, and the universal satisfaction manifested by the people in their effects, seemed to have decided forever the true policy of the United States. But in the year 1806, when our commercial rights were again attacked by the same nation which had but imperfectly atoned for her injuries in 1798, and in a manner more unwarrantable, insolent and outrageous than before, the people expected that the government would have recourse to the same policy which had formerly been crowned with such signal success. Instead of prompt and vigorous measures of defence, they have seen the government retire from the conflict; and by annihilating their whole foreign commerce, tacitly confess that they are unwilling or unable to protect it. This apparent inability or indisposition to resist aggression, has furnished a pretence to another prince to retaliate on his enemy through our unprotected rights. Thus the United States are placed in a situation, unprecedented it is believed in the history of the world, being involved at the same moment in serious controversies with two most powerful nations, who are themselves at war with each other.

The interdiction of foreign commerce for an indefinite period, by perpetual laws, is justly considered as a total annihilation of it. The people of this country are not accustomed to class among their rights, such enjoyments and privileges as depend on the will of any set of men whatever; under such circumstances they would cease to be the *rights* of a free people. Yet it is obvious that the acts laying

an embargo have suspended their commercial rights; and if those acts are constitutional, these rights can never be restored without a concurrent act of all the branches of the federal government. The events now passing at the seat of government strongly exemplify the force of this remark. If one branch of the Legislature should be unanimously inclined to remove the embargo, and even if one other branch should concur, yet the President of the United States may prevent the passing of an act for such a purpose: and if afterwards only twelve members of the Senate should adopt his policy and unite in supporting his measures, the embargo must remain in force. Most certainly the people of this country never intended to subject to the discretionary power of thirteen men, one of their most essential and invaluable rights. If the existence or the apprehension of war would justify a temporary embargo, the spirit of the constitution would demand that it should be imposed for a short and definite period; so as to require from time to time the same concurrence of opinion to continue it, which now is required for its removal.

In the act of Congress passed on the ninth day of January last for enforcing the preceding embargo act, this Legislature see with extreme pain a perseverance in the system, which has proved so injurious to the country. But they are still more alarmed from examining some of the provisions of this act, which appear to them hostile to the dignity and independence of this Commonwealth, and subversive of the civil liberty and constitutional rights of its citizens. They see there, the rights of individuals subjected to the arbitrary will of an executive officer, instead of being defined and secured by standing laws: secret and variable instructions and orders of the President, entitled to equal respect with the laws of the land: an indefinite and almost unlimited authority given to the officers of the customs, without any warrant from a civil magistrate, to search for and seize the property of the citizens: excessive sureties required of men

who are not even charged with any offence; and excessive fines and penalties imposed: individuals exposed to losses and penalties, for actions which were lawful at the time of committing them: and the benefits of a trial by jury in too many cases virtually deed. If any citizen who is aggrieved should apply for redress to the laws and judicial courts of the commonwealth, their processes may be impeded, their officers resisted, and their authority put at defiance, by the standing army of the United States under the command of any inferiour officer, empowered by the president. Thus whenever a petty officer shall be found hardy and adventurous enough to exercise the authority conferred by this act, the sovereignty and independence of the state will be humbled in the dust; or its government must vindicate by force its dignity and its honour, and may be consequently involved in a civil war.

This legislature cannot review without the most painful emotions the measures of the general government which they have here been considering. They cannot, without the most gloomy apprehensions, contemplate the probable consequences of a perseverance in those measures. They are constrained respectfully, but most unequivocally, to declare their conviction that the several laws before referred to, which interdict the foreign commerce of the United States, and which have imposed numerous embarrassments on the coasting trade, must have originated in a misconstruction of the federal constitution; that they are contrary to the spirit and intention of that instrument: and are not warranted by any of the powers therein given by the people to the Congress of the United States. In the hope of preventing any further evil consequences from these measures, and with the most ardent desire to preserve inviolate the constitution of these states, and to remove every source of discontent and jealousy among the different members of the Union, this legislature do solemnly remonstrate against the several

acts of Congress for imposing and enforcing the embargo; and do earnestly request your honourable body to take the same into your most serious consideration, and by repealing them to restore this people to their former enviable state of freedom, prosperity and happiness.

It is impossible to contemplate the repeal of the several acts relating to the embargo, without considering the various substitutes for this measure which have been proposed, and which are now before the publick. This legislature feel bound to express the strong and decided opinion they entertain on this subject, before any of these proposed measures shall be adopted. The expression of this opinion is required by a just sense of their own rights, and those of the state which they represent; and also by a due regard to the sentiments and feelings of their constituents, which are well known to the individuals of this legislature, and which are so strongly displayed in the numerous petitions and memorials daily arriving from all parts of the commonwealth.

The prohibition of all intercourse with France and Great Britain and their respective dependencies, would probably prove fruitless and inefficient, from from the extreme difficulty of enforcing its observance; and would thus serve to bring into contempt the laws and government of the country; or if enforced it would impose embarrassments on commerce nearly as fatal as the obstructions created by the present embargo. It would soon become a restriction only on the orderly and well disposed part of the community; and would furnish opportunities and inducements to the officers of government, by occasional indulgence and connivance, to promote the interests of their personal or political friends. But in another view of this measure it appears still more serious and alarming. It is obvious that if the embargo was removed, our citizens would have but little intercourse with France or her dependencies. The total disregard of the laws of nations, and the obliga-

tion of treaties, manifested by that government ;—the seizure and detention of neutral property in all parts of her dominions ;—the unprecedented decrees against neutral commerce promulgated at Berlin, at Milan and at Bayonne, would deter our citizens from adventuring in commercewith her subjects. The proposed non-intercourse therefore would in effect apply solely to Great Britain. The natural tendency of this measure, which is undoubtedly foreseen if not intended by some of its advocates, would be to involve the nation in war with Great Britain, a measure which would necessarily produce a fatal alliance with France.

The project of arming our merchantmen to resist seizures by either of the belligerents, appears to manifest a spirit, which when excited in a just cause will always be warmly approved and vigorously supported by the people of Massachusetts. They cannot cease to lament, that some portion of this spirit had not been exhibited in resisting the first outrage on our rights by the Berlin decree of November 1806. If our government had at that time expressed a strong sense of this outrage on the nation, and a firm resolution to vindicate and maintain its rights, they would have been most cordially and zealously supported by men of all political parties. This project, if adopted now without limitation, however it may be intended by those who propose it, would speedily and inevitably lead to a war with Great Britain. France has comparatively few cruisers on the ocean, which is covered by the ships of her enemy. Our vessels would be seldom encountered by those of the former power, while hardly one would escape those of the latter. All our actual collisions would necessarily be with Great Britain, who would thus be made to appear to be the only aggressor ; and when the publick sensibility was excited by these causes, the dictates of reason, of justice and sound policy would cease to be regarded. It cannot be too often repeated, that such a war would necessarily involve a destructive alliance with France ; an alliance which

experience has shewn to be more fatal than any war, and which is universally dreaded throughout this part of the United States, as highly dangerous to the independence of the nation, and hostile to the liberties of the world.

The legislature of Massachusetts express without reserve their sentiments on the conduct of the two belligerent powers of Europe. They cannot be restrained by the audacious and unfounded insinuation, that the people of New England are influenced by undue partiality to either of those powers. They repel with indignation this slanderous aspersion, which cannot be believed even by those who propagate it. It is refuted by the well known spirit and patriotism of this people; it is disproved by the annals of our revolutionary war, and by our whole history to the present day. This state was among the first to resist the encroachments of the British government at that time; her citizens still retain the same spirit to oppose unjust aggressions, from whatever quarter they may be attempted. While they cultivate this spirit, the pledge of their liberties and their independence; they cherish also those moral habits and religious principles, which distinguished their ancestors, the first settlers of this country. While vindicating their own rights, they are admonished candidly to examine, and religiously to respect, the rights of others. They can never cordially engage in any contest which does not appear to them *necessary* to the honour and the essential interests of their country; nor can they appeal with confidence to the God of armies in a war which does not appear to them to be *just*.

With these impressions the legislature of Massachusetts have deliberately examined the several documents respecting the foreign relations of the United States which were published by Congress for the information of the people. They have impartially weighed and considered the dates, and the contents, of the Maritime decrees and orders of France and Great Britain, affecting the commerce of the United

States, and the dispositions of those two governments as manifested in their correspondence with our publick ministers. The numerous and repeated aggressions on the part of France, displayed in these documents, are as injurious to the honour of the nation as to the interests of the citizens; violating at once the sacred obligations of our treaty with that government, and the established principles of the law of nations. The remonstrances and complaints of our minister appear to have been treated with contemptuous silence, or answered only with new outrages; and he seems at last to have abandoned all hope and expectation of influencing that government by diplomatick representations; and to have left it to the wisdom and the spirit of the United States to adopt such other measures as may be necessary to cause their rights to be respected. While France shall maintain this contemptuous indifference, and these hostile impositions, it appears hardly possible to attempt any accommodation with her, which shall not tarnish the honour, and endanger the independence of our country.

On the part of Great Britain, there appears from those documents to be a disposition to cultivate a good understanding with this country. They have manifested a strong desire to make atonement and compensation for injuries that were even unauthorized, and unintentional; and to adjust the respective rights and claims of the two nations on such a basis as shall prevent future collisions. If these dipositions on her part are sincere, and we do not see in these documents, any reason to question their sincerity, they should undoubtedly be met by a correspondent disposition on our part. They certainly furnish an opportunity to attempt a negotiation without any sacrifice of honourable sentiment or independent feelings; and this legislature have great confidence, that such a negotiation, conducted in a fair, impartial and candid manner, would speedily restore harmony between the two countries. In considering

the different decrees and orders of France and Great Britain, it is obvious that those of the former have been uniformly first in order of time, and most injurious in their nature. But even if those nations were, as has been sometimes asserted, on the most perfect equality in this respect, and if the conduct of each furnish such a cause of war as would leave only the choice of our adversary, every motive of policy would induce the United States to select France for her enemy. Without condescending to calculate with precision the comparative ability of those two nations to injure and annoy this country, the present state of the world should decide our choice. In one event, we should have the satisfaction of aiding in that glorious struggle now carried on in Europe against the tyranny of France; and of assisting to maintain the cause of that brave and gallant nation which has lately thrown off the yoke of her oppressor; and which was among the first to promote our exertions in a like cause. In the other case, we should immediately be arrayed on the side of France; we should necessarily aid the gigantick strides of her emperour towards universal domination, and assist in annihilating the independence of nations, and the freedom of the world.

ADDRESS

Of the Legislature to the People of the Commonwealth of Massachusetts.

Fellow Citizens,

THE legislature of Massachusetts have found themselves impelled by the existing crisis, and by the importunity of a large portion of their constituents, to

depart from the sphere of their ordinary duties, and to bestow their serious consideration upon subjects which belong to the constitutional jurisdiction of the national government. In this course, which they have, with great reluctance, thought necessary to adopt, they have not been unmindful of the rights and powers of that government, nor of the dangers incident to an habitual interference of the state legislatures in the great concerns of the nation. They are deeply impressed with the importance of supporting that government as the bond of an union, which experience has shewn to be capable of producing the highest measure of national felicity. They are aware of the embarrassment which may be created in times of peculiar publick excitement, by unreasonable expressions of discontent by individual states. And they readily concede, that a government depending upon the confidence of the people, to be enabled to do right, must have the power sometimes to do wrong; and that a sincere approbation of wise measures, should be accompanied by a magnanimous indulgence for the errours which are incident to human nature. When the national administration ceases to possess the confidence of the people, it will lose confidence in itself; and from the want of this, will always follow a deficiency of energy and stability indispensable to its success.

A system of measures, especially respecting negotiations with foreign nations, must not be assailed by the rash and petulant opposition of a particular state, before its object and bearings are discovered. If a legislature, yielding its dignity to the suggestions of impatience and discontent, proceeding from partial and interested sources, will undertake to decide upon questions exclusively of national cognizance, disturbance and confusion must ensue, both in the general and state governments; and such conflicts, when they become frequent, can terminate only in a dissolution of the Union.

It is with a solemn apprehension and dread of this

deplorable event, and with a most anxious solicitude to avoid any precedent which may, however remotely, tend to produce it, that the legislature of Massachusetts have been influenced in all their deliberations. The caution and forbearance which are naturally imposed by these considerations, would have restrained them under circumstances not absolutely imperious, from expressing their opinion upon the measures of our national rulers.—They would have endured great sacrifices of interest; they would have acquisced in great violence to their own views of national policy; they would have concealed their fears and suppressed their indignation, if the calamity in which the country is wantonly involved did not threaten absolute ruin in its consequences, and forbid delay in the expression of their feelings. But they have been compelled to inquire for themselves. What can be done, when the whole community which they represent deems itself oppressed, and its local and permanent interests forever endangered; when the administration through pride of system, from misapprehension of the interests of the country, or under the influence of a hostile disposition towards one nation, or undue partiality to another, adopts and deliberately adheres to an infatuated policy, which arrests all the occupations and disturbs all the relations of society, and by sapping the foundations of individual prosperity, drives a whole people to despair?

In this extremity the legislature has endeavoured to conform to unexpected circumstances, and to the claims of their constituents upon their affections and duty. Endeavouring to divest themselves of passions and prejudices; protesting in the sight of God the sincereity of their attachment to the union of the states, and their determination to cherish and preserve it at every hazard, until it shall fail to secure to them those blessings which alone give value to any form of government; and, confident that under a wise adminstration it will always be adequate to

this object; they have arraigned the measures of our national rulers, not with a spirit of animosity, or a desire to expose them to obloquy and disgrace, but with a single view to stop their career in a course of measures to which it is physically as well as morally impossible for the people of this commonwealth much longer to submit. The most important results of legislative deliberation upon these subjects will appear in two reports of a committee of the House of Representatives, in another report of a joint committee, and in a remonstrance to Congress; *all* of which are laid before the publick. A candid examination of these documents will probably satisfy our constituents that less could not be done consistently with the claims of our fellow citizens, nor more without authorizing a forcible resistance to acts of Congress, an ultimate resource, so deeply to be deprecated, that the cases which might justify it should not be trusted even to the imagination, until they actually happen.

While the legislature insist upon their right, in common with all other lawful assemblies of their fellow citizens, to express their opinion of publick measures, and feel it to be their peculiar duty, as the immediate guardians of the rights of their constituents, to warn them of all unconstitutional acts and usurpations of the national government; and while they, at the same time, readily acknowledge the expediency of exercising this right ought to be restricted to cases of great national emergency, it is but justice to themselves to *demonstrate* that the present state of this commonwealth is within this obvious exception.

The towns which have already presented petitions to the legislature in their corporate capacity, include nearly one third part of the taxable property of the commonwealth, and many of them are towns which at the commencement of the political year, were the supporters of the present administration, and are now represented by its friends. To this number must be

added those who have not petitioned, but whose representatives, with a full knowledge of the wishes of their constituents, have concurred in the measures of the legislature; and the minorities in other towns which still adhere to the administration. Thus it is certain that an immense majority of the people of Massachusetts may be considered as before the legisture, describing the miseries and grievances of their situation, and requiring their interposition to obtain relief.

The language of the petitions from various quarters, and from all classes of the people, exhibits an affecting picture of the publick distress. The merchant on the sea coast has abandoned his enterprizes, and the trader in the country has lost his customers, his debts and his credits. The ship owner beholds the silent and certain ruin of property, sufficient to carry on the principal trade of the world. The work shop of the mechanick is deserted, and the ship builder is without employment. The produce of the farmer has fallen in value; while all the articles for which he depends on foreign nations, have risen to a price which places them beyond his reach; and this misfortune will now be aggravated by an unprecedented addition of duties. The creditor from necessity presses on his debtor, and the debtor beholds his property sacrificed at half its value.

All these accumulated evils have been more particularly felt in the eastern part of the commonwealth, where by the annihilation of foreign commerce, and the oppressive restriction on the coasting trade, a hardy people, who enjoyed competence and looked forward to affluence, have been involved in the deepest and most aggravating distress, while their lumber is left to rot on the banks of their rivers.

These existing evils are greatly aggravated by a prospect of the future. The habits of the world change and conform to circumstances. The nations that have hitherto been dependent on us for any portion of the necessaries of life, have learned that no

dependence can be placed on supplies from a people whose experiments or prejudices may at any moment make them their victims. They have learned a secret highly injurious to us, that our commerce is not essential to their permanent welfare, and that nature has furnished them with advantages which will enable them to dispense with all such of our exports as they have hitherto considered of the first necessity. Hence, if this system is longer continued, when the liberty of the sea shall at last be restored to us, we shall find ourselves mere vagrants on the ocean, and excluded from ports of whose commerce we once enjoyed the monopoly. The old channels of trade will be crowded with the ships of other nations: foreign marts will be supplied by the produce of their own fields and fisheries, and foreigners will be their own carriers. Even France, grown desperate by the necessity which her own tyrant imposes on her, feeds her own colonies and receives their produce in their own ships. But if trade should unexpectedly be open to us, and excite our enterprize, the whole machinery of commerce is so disordered, that years cannot restore it to its former activity. Old relations and connexions have been dissolved, and are to be renewed. The credit of our merchants abroad is to be re-established, and the main spring of navigation to be restored. Our mariners have been driven by want and distress into foreign service, and are now fighting the battles of other nations, to escape, perhaps in an honourable death, the inglorious servility and humiliating dependence of helpless poverty. All these evils are aggravated by the consideration that they have been but useless sacrifices to a ruinous experiment, and that they are the result of measures as unavailing in their effect upon foreign nations, as unequal in their operation on our own country.

Such is the faint outline of the situation of this people, as described by themselves in their various petitions. It is the more painful, as it comes into contrast with the unparalleled prosperity which un-

mediately preceded it under former administrations, and which an observance of their policy would still have insured to our country.

The suspension of commerce, although the immediate cause of publick distress, is also to be regarded as the effect of a departure from the system of Washington, and of hostility to those who pursued his politicks and enjoyed his confidence.

The limits of this address will not permit a minute examination of the principles of the first administrations, nor of a detailed comparison of them with those of the present. It is, however, undeniable, that the period of the two former administrations was the golden age of America; and such was the impulse given to the publick prosperity, that it continued to influence the first period of the present administration, notwithstanding the errours and deviations which were destined by a slow operation to reduce the nation to its present state. Yet it has not been perceived, that our present rulers have been called upon to encounter greater difficulties and embarrassments, arising from the state of the world, than those by which their predecessors were encompassed. France violated our commercial rights, insulted our government, and availed herself of every art and intrigue to entangle us in an alliance with her; but we escaped, and preserved our peace, our commerce, and our honour. The spoliations of Great Britain on our commerce, excited resentment in the publick mind, and demanded redress, which was obtained by negotiation, and our useful and lucrative connexion with that country was still maintained.

Whatever are the motives that may be presumed recently to influence the conduct of those respective nations towards the United States, it is probable they were then of the same character and description as at present. The sympathy of the people in the French revolution was general and ardent; their irritation against Great Britain, feverish and violent; yet under the pressure of these external circum-

stances, combined with rebellion in the heart of the country, without the benefit of example to guide, or experience to confirm its measures, the new government was enabled to preserve peace at home, and with half its present resources, to prepare for war, and command respect abroad.

By what fatality has it then happened, that the prosperity of our country has experienced this fatal reverse?

A full and satisfactory reply to this inquiry would lead to a review of the whole history of our government, from its commencement to the present time, and is therefore not to be expected in a brief address. But a respectful attention to the complaints of the people requires that the principal causes should be at least suggested.

The first of them is to be found in the love of power and the pride of system, which, united to the spirit of party, have been exerted to secure to one portion of the Union a controuling influence over the other. The people of the United States may be classed under three *general* descriptions; the agricultural, the planting, and the mercantile interests. The first includes the farmers of those states who cultivate their own lands by the hands of freemen. The second comprises the planters of the southern states, who cultivate their lands by slaves. The last may be considered as including the merchants, seamen, mechanicks, manufacturers and all who are connected with or dependent upon trade and commerce. The interests of these three classes are naturally favourable to each other, and may be easily so combined by a wise government as to be instrumental in promoting the prosperity of all, and the greatest attainable degree of national strength; or they may be so severed by a weak and partial administration as to render each a prey to jealousies, strife, and unnatural competitions, which will be equally ruinous to all.

The mercantile class are the principal proprietors

of the active capital of the country, and their welfare is inseparable from the success of commerce and navigation.

This class is proportionably the most numerous in the eastern states. And in these states, considering them as one section of the country, the interests of the farmer and merchant are, from usage and antient relation, as well as from the nature of things, so blended and connected, that the one has scarcely less advantage from the success of commerce and navigation than the other. This cannot be affirmed with the same precision in regard to the planting interest. To this class commerce is also essential, but it is of less importance whether their commerce be carried on by the navigation of their own, or of a foreign country. A small proportion only of ships and vessels is owned by their merchants. On the contrary, an immense portion of the wealth of the eastern section of the Union consists in shipping. For example, in the year 1805, the aggregate tonnage of the United States was eleven hundred and forty thousand three hundred and sixty-eight tons: of which Massachusetts owned four hundred and twenty-five thousand nine hundred and forty eight tons, including upwards of one fourth of the whole coasting vessels, more than one third of the whalemen, and nearly six sevenths of the cod fishermen. No nation has ever prosecuted a successful navigation without the protection of a naval force; but as such a force would naturally augment the strength and wealth of that part of the Union in which it should be built and manned, it would be an easy task to inspire the planting interest with a jealousy of such an establishment, and to inculcate upon them a belief in the plausible, though fallacious, theory, that commerce, like agriculture, must protect itself. This jealousy, once excited, is naturally ripened into hostility, and extended to those men and states that are principally concerned in commerce. The farmer who lives in a commercial state becomes at first the dupe of these

prejudices, and deceived by the similarity of names, believes his interest to be the same with the planter's, and lends his aid to weaken the commercial system. Thus the planting interest, obtaining an ascendancy throughout the Union, is enabled to aggrandize itself, and give laws to the nation.

The great Washington, considering himself the father of the whole people, was incapable of giving countenance to the jealousies arising from these causes. He was the avowed friend of commerce, and the advocate for its protection by means of a navy.

For the sake of commerce, he concluded a treaty with Great Britain, amid the clamours of opposition. He patronized banks and monied institutions, as indispensable to the general welfare; and felt that the interest of each class and the power and wealth of each state were for the benefit of all. His successor adopted his system, and urged, to the utmost of his power, the provision for a naval establishment.

Far different has been the policy of the present administration. Under it we have seen the spirit of party and of hostility to the interests of navigation, burn with redoubled ardour, and all attempts to protect them abandoned. The navy has been permitted to go to decay, and the commercial treaty with England to expire. The New England farmer has been wheedled into a belief that he has no greater interest in the success of navigation than a Virginian planter. The doctrine has been propagated, that the commerce which cannot protect itself is unworthy of protection; that in time of peace, when no danger exists, it must be used as a source of revenue; but in time of war it must be abandoned, and those engaged in it must betake themselves to other pursuits; and, finally, that it is not an object of protection, but an instrument of coercion.

Ostentatious displays of the payment of the publick debt have created a delusive popularity, which has led the administration to presume upon their

power to coerce the commercial states at their will and pleasure. They have proscribed and displaced all who have dared to give them true information, and thus shut up the avenues to a just estimate of the interests and feelings of this people. They have been deceived by men who were themselves either ignorant or deceived, and they have arrayed the people against each other in an attitude highly dishonourable to the nation, and menacing consequences at which every patriot citizen must tremble.

Another capital defect in the present system, will be found in the total omission to estimate properly the danger and state of our foreign relations.

There has been no period since the French revolution, that has not been pregnant with danger to the peace of this nation. Our collisions with the belligerent powers have been incessant; and we have been in several years repeatedly on the eve of a war with Spain. During the whole term of Mr. Jefferson's administration, the revenue from commerce, owing to the immense capital that had been accummulated under the auspices of his predecessors, was yearly augmented; yet the appropriations for national defence have been truly contemptible.

Our harbours have been constantly exposed to the smallest naval armament. No establishments have been made for naval or military instruction; no serious preparations for a state of war. Every important object has been sacrificed to the pretence of diminishing the publick debt; the merit of which is hardly a theme for exultation, when it is considered that the whole amount of the reduction of the debt, since Mr. Jefferson's administration, is not equal to the additional revenue for the same time, beyond that of the preceding administrations. This false economy and unwarlike attitude has probably conduced to degrade us in the estimation of Europe, and expose us to outrage and insult.

Another and principal cause of our difficulties may be found in the conduct of the administration to-

wards Great Britain and France. It is certainly the misfortune of the party in power, that their professions of strict impartiality towards the belligerent nations have been accompanied by language and conduct which have prevented their being accredited.

That a party existed in this country prior to the conclusion of the late war, which, either from a sense of gratitude or dependence, was disposed to over value the part taken by France in our revolution, is not to be denied. It is equally certain, that the present leading members of the ruling party were reputed to be the firm, confidential friends of the French ministry, and advocates of their policy. It has also uniformly been stated, that these gentlemen, or their friends, at the close of the revolutionary war, did insist on Congress, conformably to the wishes and suggestions of the French cabinet, that neither the express acknowledgement of our independence by Great Britain, nor our right to the fisheries, nor the possession of the western country, and the free navigation of the Missisippi, should be indispensable conditions in the proposed treaty of peace.

It has also been uniformly stated, without contradiction, that these same persons were of the party which procured instructions to be given to our minister appointed to negotiate the treaty of peace, to act only with the consent and concurrence of the French cabinet in every article of the treaty; and that when our ministers, Adams and Jay, in spite of the perfidious intrigues of Vergennes, obtained from Great Britain the recognition of our independence, secured to us the fisheries which France demanded for herself, preserved a right to the navigation of the Missisippi, and obtained a clear title to the western country, this same party endeavoured in Congress to procure a vote of censure against our ministers for this exertion of patriotism and independence.

In the year 1794, this same party, under pretence of securing our rights, proposed a series of resolutions in Congress, founded on their favourite policy

of coercing Britain by our commercial warfare, but which at that period would have inevitably involved us in a war with her, and in consequence an alliance with France, that would have made us a party in all the wars in which she has been engaged, and sharers in the fate which has befallen all her allies.

The same party opposed the mission of Mr. Jay to England, and violently condemned the treaty concluded by that minister, which has so greatly conduced to the unparalleled prosperity of this country. And during the whole of the time that the American people were agitated by the first events of the French revolution, and the cabals of the French ministers, they were regarded by those ministers as friendly to France, and charged with having a language official and a language confidential.

At a subsequent period, the same party in the assembly of Virginia, and other legislative bodies, as well as in Congress, opposed all defensive measures against France, whose indiscriminate robberies threatened the extermination of our commerce, and whose indignities and outrages towards our publick ministers had awakened a sentiment of indignation in all impartial minds.

The same party have permitted the British treaty to expire without attempting to renew it, and have rejected another treaty, framed by their own confidential ministers, which contained a substantial security for our claims to the rights of neutrals, and refused their assent to arrangements which would have obviated the inconveniences and injuries sustained by the impressment of our seamen.

The same party have refused to accept reparation from Great Britain for the outrage committed on the Chesapeake, for reasons of mere punctilio, and thus have preserved unnecessarily this ground of national animosity, and have finally adopted the ruinous system of embargo, which is in substance the same that has been required by the French emperour of his vassal nations, and has received his explicit approbation in official communications to his senate.

If these facts and circumstances were not sufficient to establish the conclusion, that the administration have uniformly inclined to the views and policy of France; their measures and their language, subsequent to the late obnoxious decrees and orders of both belligerents, must remove all doubt upon this subject.

The legislature cannot now attempt an elaborate examination of the documents relative to the negotiation with these powers, which have been submitted to publick inspection; nor is it necessary to repeat the inferences, which will be found in the reports and memorial which they have adopted.

Let it be conceded, to avoid argument, that the administration have exerted all their skill and power in sincere efforts to preserve our neutrality, but that the mutual injustice of France and Great Britain has at length compelled them to withdraw into a retirement, in which they mean not to remain, and whence they cannot emerge without becoming a party in the war; what is the obvious policy, in the prospect and in the event of such an alternative, which might have been expected, and ought to have been foreseen? Should they consume months and years in piteous moans at a fate too common to neutral nations, or in active preparations to meet it? Should they content themselves with invectives and complaints and menaces against both belligerents, or prepare magazines and fleets and armies to encounter one of them?

That a nation sincerely desirous of neutrality, should be forced into a war, is an event always to be deplored, but frequently to be expected. Under this misfortune it is a consolation to have the power of choosing the least formidable enemy, and a duty to make such an election. The situation of the United States and of the world should preclude all hesitation upon their policy, when circumstances shall compel them to an ultimate decision.

That a war with Great Britain would lead to an al-

liance with France, is beyond dispute; and that this connexion must be forever fatal to the liberty and independence of the nation, is obvious to all who are not blinded by partiality and passion. This consideration should be decisive with an American cabinet, admitting all our complaints of British violence and injuries, to be perfectly just. But to judge from the measures and language of the partizans of administration, the reverse of this policy is contemplated, if war becomes unavoidable. The whole system of commercial restrictions now, without its original disguise, is intended against Great Britain. The warlike measures contemplated and proposed, though not yet adopted, are coupled with menaces against the British colonies and commerce.

The halls of Congress and other places in which the administration preserves a majority, resound with the fulminations of rage, and reproach, and revenge against Great Britain and her government, amid which the faint murmurs and occasional exclamations against French unkindness are lost almost before they reach the ear.

Of the motives to this conduct on the part of the national government, this legislature can discern no satisfactory solution, but in an habitual and impolitick predilection for France. Without pretending to compare and adjust the respective injuries sustained from the two nations, it cannot be disguised, that in some instances our nation has received from Great Britain compensation, in others, offers of atonement, and in all the language of conciliation and respect; while from France, our immense losses are without retribution, and our remonstrances are neglected with contemptuous silence, or answered with aggravating insult. While hostility with Great Britain would expose our country and our commerce in every vulnerable point, and afford no hope of honour or indemnity, a war with France would not be very different from the only state of peace which she is disposed to maintain.

Under these circumstances, can it be contended that the policy is either just or wise, which would dictate either open hostility against Great Britain, or a series of irritating measures tending to that state?

Thus, fellow-citizens, has the legislature reluctantly presented you with a general view of the causes which have reduced you to your present calamitous state. But these would have been insufficient, if you, and the people of those states whose interests are similar to yours, had remained vigilant for the common welfare.

The present leading men in the southern states, have beheld with jealousy, your increasing prosperity, and feel neither respect for your pursuits, nor sensibility for your sufferings; yet it can hardly be supposed, that they would willingly drive to extremities a section of the country which they believed to be a united people, who still regard them with fraternal feelings, who claim only a fair attention to their local habits and necessities, and who are willing, in any just or necessary cause, to devote their lives and their fortunes to the common defence. They have been deceived. The spirit of proscription, originating with the present administration, has almost wholly driven from the national councils that description of men who are the natural representatives of your true interests. Their places have been supplied by those who were disposed to flatter the ruling party, and promote their measures and policy. The same spirit of political persecution was introduced into the state governments, and at length in this state openly avowed and displayed, in a written treatise, by the present chief magistrate. The novel doctrine of excluding from power and office all who differed in any article of political faith from the great head of the nation, soon became current. The people were dazzled with the delusive glitter of a full treasury, and deafened by clamours excited against those who first provided the means of filling it. Their confidence was withdrawn from their old and tried friends; and

the politicians of the south were encouraged to hope, by your own representatives, that if your unanimity did not ensure the popularity of their measures, your divisions would prevent their defeat. Thence their apparent union and enthusiasm in favour of a system which appears to you little short of infatuation. Hence their belief that you will acquiesce in a sacrifice of your vital interests, without a perception of necessity, and plunge into war with a certainty of ruin.

If for those evils it was in the power of the legislature to devise any temporary remedy, you are sensible that a concurrence from the present executive magistrate of the commonwealth could not be expected. But as the malady is deep, you will still be deceived by trusting to any momentary relief. You must realize and comprehend the nature of your peculiar interests, and by steady, persevering and well-concerted efforts, rise into an attitude to promote and preserve them. The farmer must remember that his prosperity is inseparable from that of the merchant, and that there is little affinity between his condition and habits and those of a southern planter. The interests of New-England must be defined, undersood, and firmly represented. A perfect intelligence must be cultivated among those states, and a united effort must be made and continued, to acquire their just influence in the national government. For this purpose the constitution should be amended, and the provision which gives to holders of slaves a representation equal to that of 600,000 free citizens, should be abolished. Experience proves the injustice, and time will increase the inequality of this principle, the original reason for which has entirely failed.

Other amendments to secure commerce and navigation from a repetition of destrutive and insidious theories, are indispensable.

Towards effecting these salutary reforms, or any other which experience may prove to be fair and ne-

cessary for the prosperity of the commercial states, the restoration of full and entire confidence to those who feel their necessity, and are anxious to promote them, is the first dictate of wisdom. The legislature are aware that their measures and sentiments will encourage their opponents in propagating the foul imputation of a design to dismember the Union. But when did party malice want a theme to excite popular prejudice? When did it have recourse to one more absurd and unfounded? Why should those by whose instrumentality the confederacy was formed, be bent on the destruction of their own work? Why should the disciples of Washington forget the maxims of his government, and the precepts of his school? If the dissolution of the Union would be an evil, have the objects of this calumny less at stake than its authors? Those men and their adherents, who now point out the defects which experience has displayed in the present policy and constitution, are those who invited the publick attention to the deficiency of the old confederation. It was at that time their object to strengthen the Union; it is not less their object at this time. But as the Union itself originated in a spirit of compromise, the administration of the government should be influenced by the same spirit. If the southern states are disposed to avail themselves of the advantages resulting from our strength and resources for common defence, they must be willing to patronize the interests of navigation and commerce, without which our strength will be weakness. If they wish to appropriate a portion of the publick revenue towards roads, canals, or for the purchase of arms and the improvement of their militia, they must consent that you, who purchase your own arms, and have already roads, canals and militia, in most excellent order, shall have another portion of it devoted to a naval protection. If they, in the spirit of chivalry, are ready to rush into an unnecessary and ruinous war with one nation, they must suffer you to pause

before you bid an eternal adieu to your independence by an alliance with another.

There is not a greater diversity of interests between them and yourselves than will be found in the distant provinces of all great empires ; none, indeed, that a truly national administration cannot reconcile. It is believed too, that many of your southern brethren accord with you in their estimate of the true interests of their country, and are inclined magnanimously to sacrifice local prejudices to national safety and honour. This happy result may be expected, when New-England, faithful to her true interests, shall speak with one voice, and exclude from her councils those who from misapprehension of those interests, or any other cause, are advocates for the present destructive system. Then, and not till that time, will a temper of mutual accommodation begin to display itself in the measures of government, and a steady, dignified conduct shield the nation from foreign and domestick dangers. The Congress of the United States will no longer be the theatre of base contention and sanguinary threats. The spirit of private combat will no longer be the test of publick spirit, and the denunciations of vanity and inexperience will cease to be vented against powerful members of the common Union.

It would indeed be a grateful occupation to the legislature to apply an immediate remedy to the evils of which the petitioners complain, and which we fear will be aggravated by a continuance of existing commercial restrictions, or substitutes not less oppressive and fatal, though veiled under new titles. But they are compelled to avow that it is with the people themselves that every efficient plan of redress must originate. While the advocates for British war and the contemners of commerce can calculate upon your divisions, they will advance in their mad and presumptuous course, and rely upon your governours and your representatives to neutralize your opposition to their measures. But when they perceive that

you are prepared to break the chains imposed by a fatal and mistaken policy, and that all the constituted authorities of New England are united in sentiment and purpose; when they are sensible that you are able to resist, and that self preservation will make resistance a duty, they will reflect upon your claims, and yield to the justice of your pretensions. They will feel that the confederation is intended for the general welfare, and that it is only by paying some regard to this object, we can maintain that union which common interest should make perpetual.

On the contrary, nothing less than a perfect union and intelligence among the eastern states can preserve to them any share of influence in the national government. Without influence they can expect no regard to their interests, but are exposed to the effects of a policy, whose object will be to secure power and office, with a view to local and personal aggrandizement, and to make them *colonial* governments, subject to the worst form of domination, that of one member of a confederacy over another.

The present state of our connexion is not far from this condition. The late election of representatives to Congress, and the votes for president, plainly demonstrate the disapprobation of the present system by a great majority of the eastern people. Mr. Madison, who was known to favour it, had not a vote in those states except in Vermont; and recent elections there afford evidence that at this moment he would have none. On the other hand, in the southern states, from the artificial popularity of this fatal system, his majority has been triumphant.

The same division is apparent in Congress. The known wishes of the eastern states have been not merely neglected, but rejected with threatenings and contempt.

Politicians of yesterday, from the back woods and mountains, vie with each other in the language of insult and defiance; and the men whom you delight to honour, and the great majority of those who have

the deepest interests at stake, in the welfare of the country, are stigmatized as a corrupt and seditious part of the community. Even when those of your own representatives, who have encouraged this presumptuous conduct by their own countenance, discovering their errours, are desirous to recede, repentance comes too late. Thus, under new names, and with the same views, the embargo system is still rivetted upon our unhappy country, in spite of the opposition of some of those who appear too late desirous of retrieving their constituents from ruin. Thus a bill has already passed one branch of the legislature, authorizing letters of marque and reprisal; a measure calculated either to provoke an open war with Great Britain, or to protract the irritation and controversies subsisting between us. Choose, then, fellow citizens, between the condition of citizens of a free state, possessing its equal weight and influence in the national government; or that of a colony, free in name, but in fact enslaved by sister states.

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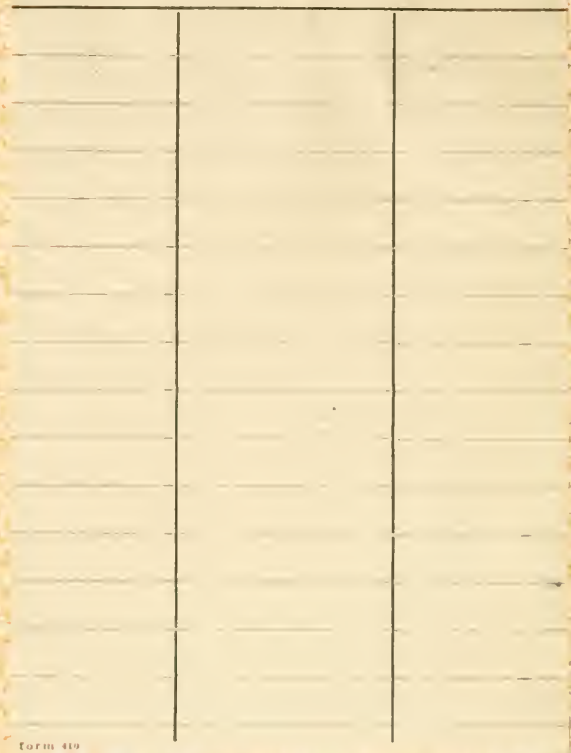

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